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Attorneys for Defendant,  
Empire Auto Parts, Inc.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

JASON REED,

Plaintiff,

v.

EMPIRE AUTO PARTS, INC.,

Defendant.

Case No. 1:13-CV-05220-RMB-AMD

DECLARATION OF RICHARD L. HERTZBERG, ESQ.

RICHARD L. HERTZBERG, ESQ., pursuant to 28 U.S.C. §1746,  
declares as follows:

1. I am an attorney-at-law of the State of New Jersey and  
am admitted to practice before this Court. I am a partner with  
the law firm of Greenbaum, Rowe, Smith & Davis LLP, attorneys  
for defendant Empire Auto Parts, Inc. ("Empire"). As such, I  
have knowledge of the facts set forth below.

2. Attached as Exhibit A is a copy of the July 17, 2014  
Deposition Transcript for plaintiff Jason Reed.

3. Attached as Exhibit B is a copy of the unpublished opinion Armstrong v. Weichert Realtors, 2006 U.S. Dist. LEXIS 31351 (D.N.J. May 19, 2006).

4. Attached as Exhibit C is a copy of the unpublished opinion Banks v. Radioshack Corp., 2014 U.S. Dist. LEXIS 60794 (E.D. Pa. April 25, 2014).

5. Attached as Exhibit D is a copy of the unpublished opinion Cason v. Vibra Healthcare, 2011 U.S. Dist. LEXIS 47160 (E.D. Mich. May 3, 2011).

6. Attached as Exhibit E is a copy of the unpublished opinion Dreyer v. Altchem Environmental Services, Inc., 2007 U.S. Dist. LEXIS 71048 (D.N.J. September 25, 2007).

7. Attached as Exhibit F is a copy of the unpublished opinion Evancho v. Sanofi-Aventis U.S. Inc., 2007 U.S. Dist. LEXIS 93215 (D.N.J. December 19, 2007).

8. Attached as Exhibit G is a copy of the unpublished opinion Frye v. Baptist Memorial Hospital, 2010 U.S. Dist. LEXIS 101996 (W.D. Tenn. September 27, 2010).

9. Attached as Exhibit H is a copy of the unpublished opinion Guenzel v. Mount Olive Bd. Of Educ., 2011 U.S. Dist. LEXIS 132102 (D.N.J. November 16, 2011).

10. Attached as Exhibit I is a copy of the unpublished opinion Hall v. Guardsmark, LLC, 2012 U.S. Dist. LEXIS 116129 (W.D.Pa. August 17, 2012).

11. Attached as Exhibit J is a copy of the unpublished opinion Kronick v. Bebe Stores, Inc., 2008 U.S. Dist. LEXIS 78502 (D.N.J. October 2, 2008).

12. Attached as Exhibit K is a copy of the unpublished opinion Pomareda v. Homebridge Mortgage Bankers Corp., 2007 U.S. Dist. Lexis 12572 (S.D. Fla. February 22, 2007).

13. Attached as Exhibit L is a copy of the unpublished opinion Postiglione v. Crossmark, Inc., 2012 U.S. Dist. LEXIS 163615 (E.D. Pa. November 14, 2012).

14. Attached as Exhibit M is a copy of the unpublished opinion Rogers v. Ocean Cable Group, Inc., 2011 U.S. Dist. LEXIS 149197 (D.N.J. December 29, 2011).

15. Attached as Exhibit N is a copy of the unpublished opinion Smith v. Sovereign Bank Corp., Inc., 2003 U.S. Dist. Lexis 21010 (E.D. Pa. November 13, 2003).

16. Attached as Exhibit O is a copy of the unpublished opinion Verdecchio v. Tri-County Real Estate Maintenance Company, Inc., 2012 U.S. Dist. LEXIS 179337 (D.N.J. December 19, 2012).

17. Attached as Exhibit P is a copy of the unpublished opinion West v. Border Foods, Inc., 2006 U.S. Dist. LEXIS 96963 (D. Minn. June 12, 2006).

18. Attached as Exhibit Q is a copy of the unpublished opinion Williams v. Accredited Home Lenders, 2006 U.S. Dist. LEXIS 50653 (N.D. Ga. July 25, 2006).

I declare under penalty of perjury that the foregoing is true and correct.

s/Richard L. Hertzberg  
RICHARD L. HERTZBERG, ESQ.

Executed on: October 6, 2014

## **EXHIBIT A**

Page 1

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
CASE NUMBER: 1:13-CV-05220-RMB-AMD

- - -  
JASON REED, :  
                 Plaintiff, :  
vs.              :  
EMPIRE AUTO PARTS, INC., :  
ET AL.,          :  
                 Defendants. :  
- - -

July 17, 2014

- - -  
Deposition of JASON REED, taken pursuant to notice, was held at the LAW OFFICES OF GREENBAUM, ROWE, SMITH & DAVIS, LLP., Metro Corporate Campus One, 99 Wood Avenue South, 5th Floor, Iselin, New Jersey 08830 commencing at 10:30 a.m., on the above date, before Catherine Golembeski, a Certified Court Reporter and Registered Professional Reporter and Notary Public in and for the State of New Jersey.

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	Page 2		Page 4
1	APPEARANCES:	1	---
2		2	DEPOSITION SUPPORT INDEX
3	SWARTZ SWIDLER, LLC	3	---
4	BY: MATTHEW D. MILLER, ESQ.	4	Direction to Witness Not to Answer
5	1878 Marlton Pike East	5	Page Line Page Line Page Line
6	Society Hill Office Park, Suite 10	6	None
7	Cherry Hill, New Jersey 08003	7	
8	(856) 685-7420	8	Request for Production of Documents
9	Representing the Plaintiff	9	Page Line Page Line Page Line
10		10	None
11	GREENBAUM, ROWE, SMITH & DAVIS, LLP.	11	
12	BY: RICHARD HERTZBERG, ESQ.	12	Stipulations
13	Metro Corporate Campus One	13	Page Line Page Line Page Line
14	99 Wood Avenue South, 5th Floor	14	None
15	Iceland, New Jersey 08830	15	
16	(732) 549-5600	16	
17	Representing the Defendant	17	
18		18	
19		19	
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	
	Page 3		Page 5
1	---	1	---
2	INDEX	2	(It is hereby stipulated and agreed by
3	---	3	and between among counsel that signing,
4	Testimony of: JASON REED	4	sealing, filing and certification are
5	By: MR. HERTZBERG	5	waived; and that all objections, except
6		6	as to the form of the question, will be
7	EXHIBITS	7	reserved until the time of trial.)
8	---	8	---
9	NO. DESCRIPTION PAGE	9	JASON REED, after having been duly sworn,
10	JR-1 Summons 18	10	was examined and testified as follows:
11	JR-2 Defendant Empire Auto Parts, Inc.'s	11	---
12	Initial Interrogatories to Jason Reed	12	EXAMINATION
13	and Plaintiff's Responses to Defendant's	13	---
14	First Set of Interrogatories 25	14	BY MR. HERTZBERG:
15	JR-3 Empire Auto Park Employee Handbook 29	15	Q. Mr. Reed, good morning.
16	JR-4 Employee Written Warning Notice 1/31/11 64	16	A. Morning.
17	JR-5 Employee Written Warning Notice 6/30/11 66	17	Q. My name is Richard Hertzberg. We just
18	JR-6 Employee Written Warning Notice 12/8/11 72	18	met. And I represent the Defendant in this matter,
19	JR-7 Employee Written Warning Notice 5/22/12 73	19	and we're here today to take your deposition.
20	JR-8 E-mail Thread 74	20	A. Okay.
21	JR-9 Employee Written Warning Notice 10/3/12 76	21	Q. Have you been deposed before?
22	JR-10 Employee Written Warning Notice 11/29/12 77	22	A. No.
23	JR-11 Driver Notice and Exchange Report 82	23	Q. Okay. Let me tell you about what we're
24	JR-12 Check View-Rollup Totals 90	24	doing here. This is an interview session under
25	JR-13 Timecard Report with Notes 97	25	oath. So even though it's in an informal setting,

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<p>1 you've got to consider it as if we were in court.  2 A. Right.  3 Q. Therefore, I want to make sure you  4 understand my questions before you answer them. So  5 if there's any doubt in your mind as to what I'm  6 asking; please stop me, and let me know there's an  7 issue and I'll try to rephrase and explain what I'm  8 asking you.  9 A. Okay.  10 Q. I see you're nodding your head a little  11 bit. It's difficult for the court reporter, if not  12 impossible, for her to take down nods, shrugs.  13 A. Right.  14 Q. So to the extent you can, try to  15 remember to answer verbally.  16 In terms of our back and forth, what's  17 going to happen, where I'm going to speak over you  18 or you're going to speak over me, let's try to keep  19 that to a minimum, because, again, the court  20 reporter will have trouble following who said what  21 and it makes for a very choppy record.  22 A. Okay.  23 Q. Because a book is going to be generated  24 from this event, and it will be a transcript book  25 that can be referred to at trial in this matter, I</p>	<p>1 Q. Okay. What's your birth date?  2 A. December 7th, 1981.  3 Q. Okay. Are you a high school graduate?  4 A. Yes.  5 Q. Where did you graduate from?  6 A. Delran High School.  7 Q. Did you have any further education?  8 A. No.  9 Q. And when did you graduate from high  10 school?  11 A. June of 2000.  12 Q. And did you take a job immediately upon  13 leaving high school?  14 A. Yes.  15 Q. What job did you take?  16 A. Trailer mechanic helper, obviously, not  17 full blown.  18 Q. Right. What was the name of that  19 company?  20 A. Alert Motor Freight, Incorporated.  21 Q. How long were you there?  22 A. About a year.  23 Q. And after that, where did you work?  24 A. Billows Electric Supply.  25 Q. B-e-l-l-o-w-s?</p>
Page 7	Page 9
<p>1 don't want you to guess. If you don't know an  2 answer, that's perfectly fine. Just say, I don't  3 know. If you're giving an estimation or a ball  4 park answer, that's fine too, just let me know that  5 you're doing that.  6 A. Okay.  7 Q. You don't have to know an exact date,  8 but around this time, sometime this year is fine.  9 A. Okay.  10 Q. If you need to take a break, we'll take  11 one, just let me know. It's not anyone's intention  12 here to put you through the ringer. There may be  13 times when your attorney may interpose an  14 objection. And, generally, these objections are  15 going to be of a formal nature to preserve the  16 record and he'll allow you to answer.  17 A. Okay.  18 Q. There may be objections regarding  19 privilege, in which event you should seek your  20 counsel's guidance as to whether or not you're  21 going to answer the question.  22 A. Okay.  23 Q. Okay. Do you have any questions before  24 we get going?  25 A. No.</p>	<p>1 A. B-i-l-l-o-w-s.  2 Q. Okay. What did you do there?  3 A. Warehouse.  4 Q. And why did you leave the work?  5 A. Not a significant increase in pay  6 raises. I went from close to full-time in high  7 school and then full-time after I graduated with no  8 raise.  9 Q. Okay. You had a raise at Billows?  10 A. An increase in pay, yeah.  11 Q. What were you doing at Billows? What  12 kind of work?  13 A. Forklift, stocking shelves, pulling  14 orders, basic warehousing.  15 Q. How long were you there?  16 A. Probably about the same amount of time.  17 Q. And another year?  18 A. 2000, 2001.  19 Q. All right. How long were you at  20 Billows?  21 A. For about a year.  22 Q. And where did you go after that?  23 A. In construction.  24 Q. And why did you leave Billows?  25 A. More money in construction.</p>

Page 10	Page 12
<p>1 Q. Okay. And what was the outfit of the 2 construction?</p> <p>3 A. That I can't remember that first one. 4 There was quite a few construction companies.</p> <p>5 Q. Okay. After that were you with a 6 series of construction companies?</p> <p>7 A. Three or four of them maybe.</p> <p>8 Q. Okay. One after the other?</p> <p>9 A. Pretty much, yeah and some back and 10 forth with.</p> <p>11 Q. Okay. Over the course of how many 12 years would you estimate you worked in 13 construction?</p> <p>14 A. Pretty much I would say 10 years plus.</p> <p>15 Q. Okay. And what type of construction 16 jobs did you do, generally?</p> <p>17 A. Generally, like, basic home 18 construction, demolition, framing, drywall, 19 painting, spackling, installing electrical 20 fixtures, plumbing, you know, basics of building a 21 house pretty much.</p> <p>22 Q. You're pretty much a Jack-of-All 23 Trades?</p> <p>24 A. I wouldn't say that. I don't have full 25 knowledge of some of the areas, but.</p>	<p>1 A. Yes, Gary Dubell.</p> <p>2 Q. Could you spell his last name?</p> <p>3 A. D-u-b-e-l-l.</p> <p>4 Q. Have you kept in touch with him?</p> <p>5 A. Yes, he's a friend of mine.</p> <p>6 Q. Okay. So when you left construction, 7 did you take a job?</p> <p>8 A. Yeah, Empire.</p> <p>9 Q. Okay. Had you worked as a driver 10 before you were with Empire?</p> <p>11 A. Yeah, I've had driving jobs before, 12 yes.</p> <p>13 Q. What kind of driving jobs?</p> <p>14 A. I've delivered auto parts in the past, 15 not body parts with like Empire, but mechanical 16 parts, delivering of furniture and installing 17 furniture. And I'd say most of the experience 18 delivering construction supplies and tools, like, 19 box and straight trucks, stuff like that.</p> <p>20 Q. And when did you do these driving jobs, 21 in between construction jobs?</p> <p>22 A. Yeah or with the construction company, 23 depending on what area I was needed in.</p> <p>24 Q. What kind of construction caused you to 25 deliver auto parts?</p>
Page 11	Page 13
<p>1 Q. Did you focus on any particular area?</p> <p>2 A. I'm sorry?</p> <p>3 Q. Did you focus on a particular area of 4 construction or just all these different things?</p> <p>5 A. It was mainly different things. I 6 would say I did more of the demolition and then 7 drywall and spackling and painting, more than other 8 parts of it, but.</p> <p>9 Q. Okay. So you think you left 10 construction around what, 2010?</p> <p>11 A. Yeah, something like that.</p> <p>12 Q. Okay. And why did you leave 13 construction?</p> <p>14 A. I was -- just work slowed up. I don't 15 know if it was the economy or what, but full-time 16 construction kind of disappeared.</p> <p>17 Q. Were you let go from an outfit?</p> <p>18 A. No, I was laid off.</p> <p>19 Q. Do you remember the name of the company 20 that laid you off?</p> <p>21 A. New Age New Phase Construction.</p> <p>22 Q. Do you know where they're located?</p> <p>23 A. Riverside, New Jersey.</p> <p>24 Q. And do you remember who your supervisor 25 was at that time?</p>	<p>1 A. That was before the construction, the 2 phase of construction I was in. And it was back in 3 -- I worked for Car Quest, I think part-time during 4 high school.</p> <p>5 Q. Okay.</p> <p>6 A. I can't remember the exact dates.</p> <p>7 Q. Do you remember any of the names of any 8 other companies that you did delivery jobs for?</p> <p>9 A. A&amp;C Supply. They're also in Riverside. 10 Again, I can't remember dates. Sambe Construction 11 in Pennsauken. I don't remember exact dates. I've 12 driven for New Age New Phase.</p> <p>13 Q. I'm trying to understand where these 14 driving jobs fit in with the construction. They 15 seem to be continuous between 2002 and 2010. Were 16 you working two jobs or how did they fit?</p> <p>17 A. Well, like I said, I've been on and off 18 with mainly New Age New Phase probably since '05. 19 So whenever he didn't have work for me, I would, 20 you know, whatever job offered me full-time work, I 21 pretty much took so.</p> <p>22 Q. And when construction started up, you'd 23 leave the driving job and do construction?</p> <p>24 A. Yeah. I mean, I was paid pretty well 25 by New Age New Phase, so if he had a contract that</p>

<p style="text-align: right;">Page 14</p> <p>1 was going to last significant amount time, for 2 full-time hours, then I would go with him. 3 Q. Okay. Were you a full-time driver for 4 any of the companies you mentioned? 5 A. Yeah. A&amp;C Supply and Sambe 6 Construction. As far as the other companies, it 7 was part-time or driving was just something I did, 8 like, maybe per diem if they needed me to. It 9 wasn't my title at work. 10 Q. Right. So, for example, at A&amp;C Supply, 11 did you get a lunch? 12 A. Yes. 13 Q. Okay. How long? 14 A. I think it was a half hour. 15 Q. Okay. And where were you supposed to 16 take it? 17 A. I didn't have a specific place to take 18 it. 19 Q. Okay. Did you take it? 20 A. Sometimes yeah. Sometimes no. 21 Depending on how busy I was. 22 Q. Did anyone there tell you not to take 23 your lunch break? 24 A. No. 25 Q. Did anyone tell you that you should</p>	<p style="text-align: right;">Page 16</p> <p>1 hour that you didn't take a lunch? 2 A. Yes. 3 Q. And how big a company, ball park, was 4 A&amp;C Supply? 5 A. Not big at all, three or four 6 employees. I was actually his first employee when 7 he started the company. 8 Q. Okay. And you left there for 9 construction work? 10 A. Yeah, he slowed up about, I'd say, 11 probably around Octoberish when it starts getting 12 cold. So I pretty much, you know, was laid off in 13 a sense. I mean, I could have stayed working 20 14 hours a week, but couldn't really afford that, so 15 I'd gone to whatever was available full-time. 16 Q. Okay. Now, you were full-time with 17 Sambe Construction, correct? 18 A. Yes. 19 Q. And you did driving for them too? 20 A. Yes. 21 Q. Did you have a lunch with them? 22 A. Yes. 23 Q. How long was it? 24 A. Half hour. 25 Q. Okay. How big of an outfit was Sambe?</p>
<p style="text-align: right;">Page 15</p> <p>1 take your lunch break there? 2 A. No. 3 Q. How did you know you had a lunch break? 4 A. Boss said I'm allowed a half hour 5 lunch. 6 Q. Okay. He never told you not to take 7 it? 8 A. No. 9 Q. Who was the boss there? 10 A. Fred Lindsay. 11 Q. How do you spell his last name? 12 A. L-i-n-d-s-a-y. 13 Q. Okay. If you decided not to take a 14 lunch with A&amp;C, would you report that to A&amp;C that 15 you didn't take a lunch? 16 A. Yeah. 17 Q. Who would you report that to? 18 A. Fred Lindsay. 19 Q. And what did he say in response? 20 A. He just suggested -- he just adjusted 21 my hours. 22 Q. Did he pay you overtime? 23 A. It -- when overtime was available, 24 yeah. Wasn't that much. 25 Q. Did he pay you overtime for the half</p>	<p style="text-align: right;">Page 17</p> <p>1 A. They're pretty big. 2 Q. Yeah. Can you estimate how many 3 people? 4 A. I would say, maybe, I don't know now. 5 I've heard they're bigger. 50 back when I was 6 working with them. 7 Q. Okay. And did you get a half hour 8 lunch break? 9 A. Yes. 10 Q. Were you advised there that you should 11 take your lunch break? 12 A. Yes. 13 Q. Did you always take your lunch break at 14 Sambe? 15 A. Yes. 16 Q. Why did you always take it with Sambe 17 but not with Lindsay? 18 A. Most of the time I delivered parts or 19 supplies, rather, to construction sites, schools or 20 another big building that was commercial. So after 21 unloading the truck, it would be around that time 22 and everybody else would take lunch, so I would 23 just, you know, I would take my lunch with 24 everybody else. 25 Q. Okay. Would there be a common place to</p>

<p>1 take lunch?  2 A. Yeah.  3 MR. HERTZBERG: Let me mark this JR-1.  4 (Exhibit JR-1, Summons, was marked for  5 identification.)  6 Q. Okay. Please take a look at that and  7 let me know if you've seen any portion of JR-1  8 before today. Take your time.  9 (Witness Complies.)  10 MR. MILLER: Why don't you flip through  11 it.  12 Q. Yeah, take your time to look through  13 it.  14 (Witness Complies.)  15 A. This looks similar to the e-mail, I  16 guess.  17 MR. MILLER: I can't help you. If  18 you've seen it, let him know.  19 Q. Do you remember seeing an e-mail  20 similar to that?  21 A. Yeah, may have been in a sample. I  22 mean, I can't actually say for sure, so.  23 Q. You don't know one way or the other if  24 you saw this document?  25 A. Right. If it was this exact document,</p>	<p>Page 18</p> <p>1 Q. What makes you say that?  2 A. Why would something like this be filled  3 out, if the suit wasn't filed.  4 Q. So that's your best recollection?  5 A. I have everything saved on my phone, so  6 I don't have my phone with me or I'd be able to  7 answer that right now. But, yeah, pretty much.  8 Q. When you say you have everything saved  9 on the phone, you have everything related on this  10 case on your phone?  11 A. I don't really have any personal  12 computer, so I view everything on my phone.  13 Anything that's important I save, so.  14 Q. Did you save anything on your phone  15 regarding your time at Empire?  16 A. Yeah. I have a breakdown of, like, my  17 pay stubs and stuff like that. And I always write  18 down my hire date and, you know, date that I leave  19 a company regardless of that. So I pretty much  20 remember that part of it.  21 Q. How about texts with Steve?  22 A. I don't have that saved. I can  23 remember some texts that I've exchanged with him,  24 not word-for-word, but around about.  25 Q. So you think you have those texts?</p>
<p>Page 19</p> <p>1 so.  2 Q. Okay. Do you remember seeing something  3 that had a caption? And if you look through it,  4 there's a first page that has your name and then  5 Empire Auto Parts?  6 A. Yes.  7 Q. You've seen that so far?  8 A. Yes.  9 Q. But you don't know if you saw the rest  10 of this document. Is that right?  11 A. I've seen pretty much the rest of the  12 document for -- for this exact first page, I can't  13 necessarily say I've seen, so.  14 Q. Okay. So did you read this document  15 whenever you saw it last?  16 A. I skimmed through it. I read some of  17 it, but I didn't read the entire thing.  18 Q. Do you remember when you first received  19 that document?  20 A. It was maybe nine months ago, something  21 like that. Somewhere around there.  22 Q. Do you know if it was before or after  23 the suit was filed?  24 A. No, that I don't. I'm going to say it  25 was after.</p>	<p>Page 21</p> <p>1 A. No, they're not on my phone any longer,  2 no.  3 Q. Okay. Well, why is that?  4 A. I didn't feel really a need or  5 importance to save them.  6 Q. Okay. So you deleted them?  7 A. Yeah, or after so many texts it says  8 delete themselves, or after 30 or something, if I  9 don't save it.  10 Q. Do you have any texts with any current  11 or former Empire employee?  12 A. No. Like texts on my own?  13 Q. Yeah.  14 A. No, not saved on my phone, no.  15 Q. Did you have any texts, at any point,  16 with any present or former Empire employee?  17 A. I think I have texted with, maybe, one  18 or two other people in the past during my  19 employment. I don't think it had anything in  20 relation to do with this case.  21 Q. Okay. So if I understand correctly,  22 you never texted anyone at Empire or after you left  23 Empire?  24 A. After I left Empire, yes, but I don't  25 think it had anything to do with this case. I</p>

<p style="text-align: center;">Page 22</p> <p>1 can't really exactly remember, but there was a 2 former employer that we both shared an interest in 3 cars and working on cars, so I can say that I 4 texted that person more than other people, but. 5 Q. This is an Empire employee? 6 A. Former Empire employee. He was let go 7 prior to me. 8 Q. Okay. What's his name? 9 THE WITNESS: Do I have to answer that? 10 MR. MILLER: Uh-huh. 11 A. Jose Cologne. I can't remember how to 12 spell his last name, but that's how he pronounced 13 it. 14 Q. Have you talked to him at all about 15 this lawsuit? 16 A. I've tried to contact him. I haven't 17 really been successful in doing that. So if I 18 verbally talked to him about it, no. 19 Q. Well, have you texted him about it? 20 A. I may have, but I can't really 21 remember. And I probably didn't get into detail 22 about it. It was more, I think, maybe a 23 questioning on if he had experienced anything of 24 the nature of, you know, what I was intending on 25 pursuing.</p>	<p style="text-align: center;">Page 24</p> <p>1 Q. Now, you mention you read this 2 document, correct, JR-1? 3 Correct? 4 A. I said I've skimmed through it. 5 Q. That's true. 6 A. Okay. 7 Q. That's what you said, I apologize. 8 If you turn to page seven? 9 A. Okay. 10 Q. And paragraph 52? 11 A. Okay. 12 Q. Do you see that? Do you remember 13 reading that? 14 A. Somewhat, yes. 15 Q. Well, is it something you think you 16 skimmed or something that you actually focused on? 17 A. Well, I mean, I've already calculated 18 this in my head prior to reading anything of it, 19 but, you know, that would be, you know, if I didn't 20 take the lunch times five days a week. You know, I 21 really -- anything over 40 hours would be overtime. 22 So I don't think there was more than maybe one or 23 two weeks where I didn't have overtime in this 24 company at Empire, so. 25 Q. So you think you routinely worked</p>
<p style="text-align: center;">Page 23</p> <p>1 Q. Do you remember having some sort of 2 communication with him about that? 3 A. No, I don't remember. 4 Q. Do you know the amount of damages that 5 you personally are seeking in this case? 6 A. I didn't fully go into my pay stubs and 7 every single day that I didn't take lunch, but I 8 would say, you know, I would say somewhere in the 9 range of, as far as, you know, what's owed to me, 10 you know, 7,000 plus. 11 Q. Let's say between 7,000 and 10,000? 12 A. I would say something like that, at 13 least. 14 Q. Okay. Well, if it's more than -- how 15 much more do you think that would be? 16 A. I mean, as far as, you know, what is 17 owed? I would say, I can't really see it being 18 more than 15. 15, I guess, to 17 or something. I 19 can't see it. 20 Q. That's the upper level, you imagine? 21 A. Yeah. I mean, you know. 22 Q. If you received those monies that you 23 believe you're entitled to, would you continue this 24 case? 25 A. Probably not.</p>	<p style="text-align: center;">Page 25</p> <p>1 between 45 and 50 hours a week? 2 A. Yeah, maybe closer to the 45 end of it, 3 but yeah. 4 Q. Okay. Were you paid overtime at 5 Empire? 6 A. Yeah. 7 Q. So you're just suing about times that 8 you didn't take lunch. Is that right? 9 A. Right. 10 MR. HERTZBERG: Let's mark this as 11 JR-2. It's Defendant's Interrogatory Questions to 12 Jason Reed and Mr. Reed's responses to those 13 questions. We'll mark them as one document so 14 we'll refer back and forth, please. 15 (Exhibit JR-2, Interrogatory Questions 16 and Interrogatory Responses, were 17 marked for identification.) 18 Q. So please take a look at the documents 19 that comprise JR-2, and let me know if you've seen 20 either of these documents before. 21 (Witness complies.) 22 Q. There's two separate documents there, 23 so take your time. 24 A. This one I already know I received and read.</p>

<p style="text-align: right;">Page 26</p> <p>1 Q. Okay. You're looking at Defendant, 2 Empire Auto Parts, Inc.'s Initial Interrogatories 3 to Jason Reed?</p> <p>4 A. Okay.</p> <p>5 Q. That's the one you're referring to that 6 you know you saw?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And so please take some time to 9 look at the second document that's part of the 10 exhibit. Have you seen that before today?</p> <p>11 A. I remember answering these. I didn't 12 read through the actual paperwork of my responses, 13 like it says on paper, but I remember answering 14 these questions and seems like it's...</p> <p>15 Q. When you say you remember answering 16 these questions, these answers were written down by 17 you?</p> <p>18 A. No.</p> <p>19 Q. Just reported them to your attorney?</p> <p>20 A. Yes.</p> <p>21 Q. So although you didn't see Plaintiff's 22 Responses to Defendant's First Set of 23 Interrogatories, you believe that they accurately 24 reflect your answers to the questions that you saw. 25 Is that right?</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. Okay. So just so I understand, as 2 you're sitting here today, you haven't read 3 Plaintiff's Responses to Defendant's First Set of 4 Interrogatories?</p> <p>5 A. No.</p> <p>6 Q. What I'm saying is correct?</p> <p>7 A. Yes. What you're saying is correct, I 8 have not read them.</p> <p>9 Q. Okay. But you believe you saw the 10 document that has the sicker on it. Is that right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Did you ever look at a handbook 13 from Empire Auto?</p> <p>14 A. No. I signed a paper when I was first 15 employed that was handed to me by Martha, her last 16 name is Milligan, I think. I could be mistaken, 17 but I think it's. And it had, like, a breakdown of 18 things required; like, you know, starting 19 employment, and the handbook was one of them. And 20 she said that they didn't have any made up and that 21 I would receive one, but to check it off anyway 22 just so they could file the paper. So that's what 23 I did. And I never received the handbook.</p> <p>24 Q. Okay. Just so I understand. You 25 indicated that you would -- that you had received</p>
<p style="text-align: right;">Page 27</p> <p>1 A. For the most case, yes.</p> <p>2 Q. Is there any part that you feel doesn't 3 reflect your answers?</p> <p>4 A. No.</p> <p>5 Q. Okay. So, at the end of the first 6 document, there's a page that says certification?</p> <p>7 A. JR-1?</p> <p>8 Q. Number one as part of JR-2.</p> <p>9 MR. MILLER: JR-2, last page.</p> <p>10 MR. HERTZBERG: Right.</p> <p>11 Q. So take a look at that. And after 12 reading it, let me know if you're comfortable 13 signing at the bottom.</p> <p>14 (Witness Complies.)</p> <p>15 A. As far as what's on paper in here as 16 far as my responses go, either now or whenever you 17 say it's okay with you, I'm going to have to read 18 this whole thing, as far as my responses go before 19 I sign this paper. So that's, basically, what it's 20 saying, as if I'm okay with the -- what the 21 responses are. So now it's in front of me on 22 paper, you know. I have to make sure that, you 23 know, they are accurate. I don't want to be held 24 in contempt of court for something I didn't even 25 read. Yes.</p>	<p style="text-align: right;">Page 29</p> <p>1 the handbook, because we're told that you would 2 receive a handbook. Is that right?</p> <p>3 A. Correct.</p> <p>4 Q. Okay.</p> <p>5 A. I mean, I didn't write that down, like, 6 that it was just a check. Everything was a check 7 box down a list. So I just checked it off.</p> <p>8 Q. Okay.</p> <p>9 MR. HERTZBERG: Can you mark this JR-3, 10 please.</p> <p>11 (Exhibit JR-3, Employee Handbook, was 12 marked for identification.)</p> <p>13 Q. Please take a look at that and let me 14 know if you've seen that before today.</p> <p>15 A. No, I can't say I've seen this entire 16 book pieced together like this. I've seen bits and 17 pieces of it. Maybe that was photocopied and 18 presented to me, but I've never seen this put 19 together like this. I can vaguely remember certain 20 bits and pieces of it that may have been 21 photocopied and shown to me, as far as, you know, 22 like the resting meal period, breaks. I think I 23 was shown on the computer. I can't remember who at 24 the Simmons location, when I was rear-ended on the 25 Turnpike, about the at-fault accident policy. So</p>

Page 30	Page 32
<p>1 I've seen pages of this, but not the whole handbook  2 itself put together, if this is the handbook.  3 Q. When do you think, if you can estimate,  4 you saw the page reflecting a rest and meal  5 practices?</p> <p>6 A. I think during the first write-up of  7 stopping at my mother's house, or I think at the  8 time it was my house also, about -- I said, you  9 know, argued the fact of, you know, where and when  10 about taking breaks. So I think it was -- this was  11 brought up because they said to take breaks pretty  12 much, but on a sense of most drivers pack their own  13 lunch. So it was kind of seemed like, you know,  14 that was the only way to be able to take a lunch  15 without getting written up. So to say or, you  16 know, to have it covered on their end. I don't  17 really now how else to explain it.</p> <p>18 Q. Okay.</p> <p>19 A. It was, you know...</p> <p>20 Q. Do you remember seeing page 16 where it  21 says administrative pay corrections?</p> <p>22 A. No.</p> <p>23 Q. Okay. Back on 14, which you indicate  24 that you were shown. You see, under timekeeping,  25 it says: "Accurately recording time worked is the</p>	<p>1 A. Basically, yeah.  2 Q. And what do you remember him saying?  3 A. That take your lunch on your way back  4 in from your first route.  5 Q. What do you remember saying?  6 A. I pretty much didn't argue it past that  7 point. I mean, I've tried to argue this with them  8 before and it doesn't seem, like, it gets anywhere.  9 Q. In your view, what's the problem with  10 taking your half hour lunch in the course of your  11 first route?  12 A. If I run into any delays, my route was  13 pretty busy. It was either, you know, a lot of  14 stops in Philly or it was just, as far as I  15 traveled to get back in time. So if I was to take  16 a 30-minute lunch, I'm going to be getting back at  17 a later time, and therefore, less deliveries in the  18 afternoon that I wouldn't probably be able to make  19 on time before a customer closed or, you know,  20 whatever of that nature.  21 Q. In that conversation, did Mr. Moskal  22 ever tell you that you would not be paid overtime  23 if you didn't take a lunch?  24 A. Not necessarily, no. It was just  25 stressed to take the lunch on the way back in.</p>
Page 31	Page 33
<p>1 responsibility of every non-exempt employee." Do  2 you see that?  3 A. Yes.  4 Q. Okay. Did you keep track of your time?  5 A. Yeah. We had to sign in on an ADP  6 website, clock in and out.  7 Q. And you did that accurately?  8 A. Yes.  9 Q. Okay. So what if you skip lunch, how  10 would you reflect that in your timekeeping, if at  11 all?  12 A. Well, the first time I skipped lunch I  13 called in about it and was told that we have to  14 take our lunch. You're given 30 minutes for lunch.  15 So, preferably, use it in between your first and  16 second run. Sometimes, which a lot of cases was  17 kind of impossible if I'm going to get back at a  18 reasonable time to do my afternoon route.  19 Q. Okay. When you called up and advised  20 that you had skipped lunch, who did you call?  21 A. I spoke with Steve.  22 Q. Okay. Steve Moskal?  23 A. Yes.  24 Q. Did you tell him, at that time, that  25 it's impossible to take a 30-minute lunch break?</p>	<p>1 Q. And when you say not necessarily, do  2 you remember him saying that you weren't going to  3 get paid overtime if you didn't take your lunch?  4 A. Not getting paid overtime?  5 Q. Right.  6 A. No, that wasn't...  7 Q. It's your position, sitting here today,  8 that you're owed overtime for having to work  9 through lunch. Is that right?  10 A. Not necessarily. It's just it was as  11 many hours that I worked during the week. If it's,  12 you know, already at 40 and I didn't work through  13 the lunch, then, obviously, that would be in the  14 overtime factor.  15 Q. Well, that's what you're saying  16 happened, right?  17 A. I guess, yeah.  18 Q. Okay. Now, are you saying you never  19 took a lunch?  20 A. No.  21 Q. Okay. When you took your lunch breaks,  22 where did you take them?  23 A. Mainly I would attempt to take them at  24 my house, which is less than two miles away from  25 the shop. And you can tell by the Geotab that it</p>

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<p>1 was never a whole 30 minutes.</p> <p>2 Q. Was that your choice to cut it short?</p> <p>3 A. Yeah, because the first time I came</p> <p>4 close to taking a whole lunch I was given a verbal</p> <p>5 warning, so.</p> <p>6 Q. Who gave you a verbal warning?</p> <p>7 A. Jeffrey Bealer.</p> <p>8 Q. And what did he say?</p> <p>9 A. It was pretty much renamed into an</p> <p>10 unauthorized stop, and that most drivers bring a</p> <p>11 cooler with them. That was said dozens of times to</p> <p>12 me.</p> <p>13 Q. Was that true, most drivers brought a</p> <p>14 cooler?</p> <p>15 A. Yeah, 75 percent of them did.</p> <p>16 Q. Okay. Do you know whether the other 25</p> <p>17 percent who didn't bring a cooler were ever written</p> <p>18 up for violating the lunch policy?</p> <p>19 A. I mean, I can't answer for them, but I</p> <p>20 mean, I think Jose Cologne may have been written up</p> <p>21 for spending too much time at a certain stop that</p> <p>22 he said claimed was taking his lunch. But, again,</p> <p>23 it was, you know, according to what he said, less</p> <p>24 than 30 minutes. It might have been between 20 and</p> <p>25 30, but at a particular area that, obviously, they</p>	<p>1 know whether everybody else didn't take their half</p> <p>2 hour lunch?</p> <p>3 A. No, I don't know that or not.</p> <p>4 Q. Okay.</p> <p>5 A. I just don't see if you bring a cooler</p> <p>6 with you and you pull over to the side of the road,</p> <p>7 whether it's McDonald's or my house, it's the same</p> <p>8 distance away for a set period of time. What</p> <p>9 difference that makes, if it's the time that I'm at</p> <p>10 a certain location that I was being disciplined</p> <p>11 for. So I can't see that being any different by</p> <p>12 walking in the door with a cooler.</p> <p>13 Q. So, again, you're talking about your</p> <p>14 own situation that you felt you were sort of</p> <p>15 treated differently because it was your home?</p> <p>16 A. No. I'll just state that that was --</p> <p>17 it didn't matter if it was at home or just a</p> <p>18 location in general that I spent too much time</p> <p>19 with. After a while they said I wasn't allowed to</p> <p>20 stop at home, so.</p> <p>21 Q. All right. Are you finished? Did you</p> <p>22 feel like you were being singled out?</p> <p>23 A. Somewhat, yeah.</p> <p>24 Q. Did you ever feel like you had a</p> <p>25 personality conflict with Mr. Bealer?</p>
Page 35	Page 37
<p>1 didn't like.</p> <p>2 Q. Did he tell you that?</p> <p>3 A. He, basically, complained about it</p> <p>4 after a closed door quick meeting, like, a broad,</p> <p>5 like, for any of the fellow drivers to hear about</p> <p>6 it. It wasn't necessarily spoken to me personally</p> <p>7 or anybody else that we worked with personally. So</p> <p>8 it was just, like, you know, spoke his opinion</p> <p>9 about the meeting.</p> <p>10 Q. Do you remember when that happened?</p> <p>11 A. No, not exactly. Half a year before I</p> <p>12 was terminated maybe.</p> <p>13 Q. Anyone else tell you that they've had</p> <p>14 problems with the meal policy?</p> <p>15 A. No, I don't know of anybody else,</p> <p>16 really. I guess nobody else really minded, you</p> <p>17 know, getting docked a half an hour and not using</p> <p>18 it, I guess. Like I said, I can't answer for other</p> <p>19 people.</p> <p>20 Q. Do you know if other people were</p> <p>21 docked?</p> <p>22 A. Well, I mean the whole company is</p> <p>23 docked a half an hour for lunch that we were, you</p> <p>24 know, supposedly entitled to.</p> <p>25 Q. I guess what I'm asking is: Do you</p>	<p>1 A. Maybe once or twice, but on a general</p> <p>2 basis no, not towards -- not for -- towards the end</p> <p>3 maybe, yeah, but not the whole time I was employed,</p> <p>4 no.</p> <p>5 Q. Right. And you mentioned you called</p> <p>6 Mr. Moskal and let him know that you worked through</p> <p>7 lunch. Do you recall that?</p> <p>8 A. Yes.</p> <p>9 Q. And that was relatively early in your</p> <p>10 employment with Empire?</p> <p>11 A. Yeah. I'd say, like, again, halfway</p> <p>12 through, at least, or sooner. It wasn't really</p> <p>13 that long.</p> <p>14 Q. Okay. Now, how frequently would you</p> <p>15 say you stopped off at your mom's house to take</p> <p>16 lunch?</p> <p>17 A. I would stop there on the way back, on</p> <p>18 the afternoon route to grab a quick bite to eat.</p> <p>19 Maybe one or two days a week, something like that,</p> <p>20 until I was, you know, disciplined for it. And it</p> <p>21 was, you know, I mean, the times were all recorded.</p> <p>22 It wasn't nowhere near a lunch break length of</p> <p>23 time. So that was the time I just grabbed whatever</p> <p>24 it was and got back in the truck and drove to work,</p> <p>25 drove back to the shop.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q. Now, were there any times that you, in 2 fact, reported to Mr. Moskal that you had worked 3 through lunch other than that first time? 4 A. Not that I can remember, no. 5 Q. Are you certain it never happened or 6 you just don't have a recollection of whether it 7 did or didn't? 8 A. I just don't have a recollection. 9 Q. Why did you call Mr. Moskal that first 10 time that you wanted to tell him that you didn't 11 take lunch? 12 A. I think it was after the first time I 13 was verbally aware or warned about stopping to take 14 the lunch, so. I mean, if I'm not going to be able 15 to stop and rest from driving, then I'm not going 16 to, you know, I'm not going to take a lunch. And I 17 wanted to have my hours corrected or not to be 18 docked for the 30 minutes. 19 Q. How did you know to call Mr. Moskal? 20 A. Usually in situations like that I 21 report to Bealer. He would say, you know, to call 22 HR or, you know, whoever is in charge of adjusting 23 times or money. 24 Q. Did you ever tell Mr. Bealer that you 25 had worked through lunch?</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. When you first started with Empire, was 2 there an orientation of any sort? 3 A. Well, there was, like, a first 4 interview, yeah. 5 Q. Do you remember who conducted the 6 orientation? 7 A. I believe it was Steve. 8 Q. Okay. And in the course of that 9 orientation, was the topic of automatic deduction 10 of lunch discussed? 11 A. I mean, it wasn't labeled as that. 12 We're allowed a half hour for lunch that, you know, 13 is automatically deducted out of your check. But 14 it was, you know, okay, it's nothing I'm not used 15 to with another company. I just never been 16 disciplined for actually taking a lunch before. 17 Q. Did he say that you should take your 18 lunch in that orientation? 19 A. No, he just said that, you know, we 20 have a half hour lunch that we're entitled to. 21 Q. Did Martha Milligan participate in that 22 orientation, if you recall? 23 A. I can't really remember. 24 Q. When you say you were disciplined, 25 you're talking about a verbal or written, I guess</p>
<p style="text-align: right;">Page 39</p> <p>1 A. Yeah. 2 Q. And did he say something to the effect 3 of, well, you should call Mr. Moskal about that? 4 A. After he would say, well, you have to 5 take lunch. Kind of like, well, you should have 6 took lunch. Then it wasn't really trying to fix 7 the issue what I was trying to have fixed. It was, 8 well, you have to take lunch. 9 Q. And he would say call Mr. Moskal and 10 tell him? 11 A. Yeah, he would say, you know, call HR 12 or talk to somebody up there about adjusting your 13 times. We didn't check in and out for lunch, so it 14 was automatic, so. 15 Q. How many times do you think you had 16 that kind of conversation with Mr. Bealer where he 17 would tell you to take your lunch and you didn't 18 take it. And you said, well, you better call HR to 19 get it fixed? 20 A. With the end and calling HR to fix the 21 problem, probably not that many as compared to most 22 people, you know, we got to start packing your 23 lunch. Basically, without saying it, you know, eat 24 while you're driving was basically what I was being 25 told without someone saying that word-for-word.</p>	<p style="text-align: right;">Page 41</p> <p>1 criticism? 2 A. I was verbally warned. And I think I 3 might have another written warning of, I'm labeled 4 unauthorized stops throughout the workday or 5 something like that, which, you know, during the 6 beginning of employment I was in a vehicle with no 7 air conditioning for probably a whole summer. And 8 I might have made two or three stops along my route 9 at a store to grab something to drink or while 10 refueling and kind of hot in a steel box with no 11 air conditioning when it's 100 degrees outside. 12 Q. Okay. But in terms of receiving verbal 13 warnings or written warnings, how did that change 14 your employment routine; your payments, your 15 salary, anything of that nature, did it change it 16 at all? 17 A. No. I mean, nobody adjusted anything. 18 I didn't attempt to keep calling because it was 19 just stress to me about; oh, you have to take your 20 lunch. But, like I said, when I tried to take more 21 than a 15-minute break, it was brought up to me 22 immediately. Why were you at this place? Why were 23 you at that place, you know. Or three five minute 24 stops that weren't authorized. I mean, it's just 25 stuff that I've done at every other driving</p>

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<p>1 position in my whole life and have never been said 2 a word about ever, so I'm just at a loss. 3 Q. Okay. Other than having these kind of 4 criticisms leveled at you? 5 A. Okay. 6 Q. I mean, did you lose any salary? Did 7 you have to pay any kind of fine? Did anything 8 happen to you? 9 A. No. I just wanted that half an hour 10 break to get off the road and not deal with drivers 11 for half an hour and enjoy my lunch, that was it. 12 Q. And you felt there was sort of unspoken 13 pressure not to take your lunch? 14 A. Unspoken pressure not to take lunch, I 15 really don't understand. 16 Q. That's good. 17 Do you remember that you mentioned 18 Bealer said to take your lunch, but you felt he was 19 really trying to give a different message? 20 A. Okay. 21 Q. Okay. I'm just wondering if that's, 22 generally, the feeling you had with these various 23 verbal warnings or criticisms; that even though 24 they were saying take lunch, that they really meant 25 you shouldn't and stuff, you know, bring this up?</p>	<p>1 they go right back to work loading their truck, 2 filling their paperwork out. I'm talking about a 3 total of 10 minutes max. 4 Q. Did you ever try to take your lunch at 5 the warehouse? 6 A. I've sat down a few times and did that 7 same thing, real quick if I packed something, but 8 like I said, you know, it was less than 10 minutes. 9 Q. I mean, do you know for a fact that 10 other people didn't take a half hour lunch in the 11 warehouse? 12 A. I don't know for a fact, no. 13 Q. Is it your testimony that you never 14 took a half hour break at the warehouse? 15 A. I'm sorry? 16 Q. Are you saying that you never took a 17 half hour break in the warehouse? 18 A. I may have taken, you know, a 20 minute 19 break. Actually, you know, maybe two times where I 20 would, if I actually sat there. Then there's been 21 days where everybody's been there and the parts for 22 the afternoon haven't showed up, so whoever is 23 there is, basically, you know, we're not doing 24 anything until the truck comes. So I don't know 25 how that's, you know, what factors are determined</p>
<p style="text-align: center;">Page 43</p> <p>1 A. Somewhere along that line. It's just, 2 basically, like I bring a cooler and eat in the 3 truck while you're working, you know, while you're 4 at this stop about to leave, eat real quick and 5 continue on your way. Well, you know, that's not a 6 half hour, you know, anybody could do that. 7 Q. Did someone actually tell you to do 8 that? 9 A. No, that's what I meant earlier by not 10 saying it word-for-word. So. 11 Q. That's why I said, that was sort of an 12 unspoken message that you felt was being sent to 13 you? 14 A. Okay, then, yeah. 15 Q. Okay. And when they said take your 16 lunch, they weren't being -- they really didn't 17 mean it? 18 A. Exactly. 19 Q. Did you ever see people taking their 20 lunch at the warehouse in between runs? 21 A. Yes, if you want to call it a lunch, 22 yeah. 23 Q. Okay. Why do you say that? 24 A. Because, you know, you see people going 25 in to sit down with their cooler and they eat and</p>	<p style="text-align: center;">Page 45</p> <p>1 in that case if everyone's back and there's nothing 2 to do because the parts ain't there, I don't know 3 how, you know. I would say it's fair to consider 4 that a break since no one's doing anything. I 5 would agree to something like that, you know, but. 6 Q. How often would that happen, if you 7 could quantify that? 8 A. Not much. 9 Q. Not much. When you came to take your 10 lunch at the warehouse, would you basically 11 socialize with the other guys who were having their 12 lunch too? 13 A. No. Everybody got back at a different 14 time. It wasn't like a group thing. 15 Q. Okay. So for all you can remember, 16 most of the time you just ate on your own. Is that 17 right? 18 A. Yeah. Maybe one other driver might be 19 in there at the same time. 20 Q. So just so I'm clear, it's your belief 21 you never took a half hour lunch when you were at 22 the warehouse? 23 A. No, not when, you know, there are parts 24 are there for the afternoon, you know. I could 25 load up and go. I always just pretty much ate and</p>

<p style="text-align: right;">Page 46</p> <p>1 then got back to work.    2 Q. Okay. Now, is it fair to say there    3 were circumstances where you could have stayed for    4 a half hour, but you decided I might as well get    5 going?    6 A. Maybe, yeah. I mean, most of the time    7 with my routes, if I would have done something like    8 that, it might have meant a customer at the end of    9 the day on my route closing before I showed up with    10 their parts. So it was, mainly, you know, focus on    11 making sure the customers getting their parts    12 rather than sitting around for a half an hour.    13 Q. Did you feel that the routes that you    14 were given were unreasonable?    15 A. I thought they were a little excessive,    16 where a couple of stops could have been taken off    17 of mine and put on someone else's. But I've been    18 also told by people that, like, Jeffrey Bealer that    19 I'm better at doing certain routes, like that with    20 more pressure than other drivers. So that in    21 itself, you know, well, okay, takes away time from    22 breaks also, especially in the city.    23 Q. What do you think it is? Well, first    24 of all, did you feel that your routes were    25 different from the other drivers?</p>	<p style="text-align: right;">Page 48</p> <p>1 A. Yes, not all the time, but I did bring    2 it up to him, yes.    3 Q. Okay. Did you ever speak to Steve    4 Moskal about that?    5 A. I don't really remember. I may have.    6 I mean, I didn't -- I'm not really too much of a    7 person to complain about something like that, so I    8 would say that maybe no. Even Bealer would counter    9 and say; oh, well, do my route. I even said okay,    10 let's switch. And he didn't even do that, so.    11 Q. So there were times that you skipped    12 lunch and didn't advise either Steve or Jeff. Is    13 that right?    14 A. Right. That's a lot of times.    15 Q. To the best of your recollection when    16 you did report missing lunch, did you receive the    17 appropriate adjustment to your pay?    18 A. The one time that I can remember    19 calling Steve and saying that I worked through    20 lunch, he made the adjustment. And I mean,    21 whenever, I guess, pay time came, but when I    22 received my check, it was adjusted. But during the    23 conversation of the phone call, it was from now on    24 make sure you take your lunch. That's how the    25 phone call ended. So I'm not going to keep calling</p>
<p style="text-align: right;">Page 47</p> <p>1 A. I felt that they weren't switched up    2 enough as they should be. I mean, that's kind of    3 like where the personality conflict with Jeffrey    4 Bealer came in. Like, I got enough experience    5 driving to know that if you have a group of people    6 delivering your product, it would seem a good idea    7 to have each of those people know every route in    8 case one calls out, this person's got to go there.    9 If it's brand new to somebody, they have a higher    10 chance of getting lost and not knowing where to go    11 as compared to somebody who knows that route. So    12 if everyone's used to every route, you wouldn't    13 have that problem, but they weren't switched up. I    14 mean, every six months or something like that they    15 would. I would get switched up or if I got back    16 too late in the afternoon, I would go to a couple    17 stops in Jersey and as compared to going to PA,    18 again, with another set of stops. That's the only    19 time they were switched.    20 Q. Okay. So just so I understand, did you    21 feel that your route in general was more demanding    22 than some of the routes that other drivers were    23 running?    24 A. Yes.    25 Q. Okay. And you told Bealer that?</p>	<p style="text-align: right;">Page 49</p> <p>1 every time that I needed an adjustment made when it    2 was just clearly said to me to make sure you take    3 your lunch. But then it turned into getting, you    4 know, criticized or disciplined for 20 minutes.    5 And then I have a response to that. And it's, oh,    6 well, most drivers pack their lunch. So it's, you    7 know, I mean, because I don't know where to go or    8 what else to really say to them not coming out    9 clearly. And like saying; oh, well, we're going to    10 dock your pay with and we don't want you to use    11 your whole 30 minutes.    12 Q. Did you take lunch more than once at    13 your mom's house?    14 A. Like throughout a week?    15 Q. Yeah.    16 A. Yeah. A couple of times, yeah.    17 Q. Couple of times a week?    18 A. Maybe twice a week, something like    19 that.    20 Q. And do you know how many times you were    21 written up about going to your mom's house?    22 A. I mean, verbally warned. And I think    23 written up. And then it was; oh, you're not    24 allowed there period. But like I said, this was --    25 it was less than 20 minutes I was there, so, and in</p>

<p style="text-align: right;">Page 50</p> <p>1 a route on the way back to the shop, just like if I    2 would have stopped on a McDonald's or anything    3 else. It's not like it was out of the way.    4 There was one time I forgot my license    5 and I told Bealer, or my wallet, which I had my    6 license in it. And I said, you know, when I leave    7 here, in this case, it was out of the way. Can I    8 stop home and grab it real quick. And he said    9 yeah. So, I mean, like, there's stuff like that    10 where I had spoken with Jeffrey Bealer prior to    11 doing that.    12 Q. Okay. Focusing on that first    13 conversation with Steve, and he told you to take    14 your lunch, what was your interpretation of his    15 tone in telling you that, if you had one?    16 A. I mean, his tone sounded, you know,    17 genuine, but, you know, that's why I was kind of    18 like, you know, I didn't know what to make, like,    19 being written up or, like, when I'm stopping to    20 take a break, or if it was a couple of stops on the    21 way totaling 15 minutes, like, I didn't understand    22 what I was getting written up, whatever you want to    23 call it, criticized after being told to take your    24 lunch on your way back, you know, in. So I don't,    25 if I stopped at and made three five minutes stops</p>	<p style="text-align: right;">Page 52</p> <p>1 garnishment, but yes.    2 Q. How long do you think the garnishment    3 took place, to the best of your recollection?    4 A. Well, probably close to a year if not    5 at least a year with the IRS.    6 Q. Did you ever talk to anyone in    7 management either -- well, did you ever talk to    8 Steve about the garnishment?    9 A. Yes.    10 Q. What was the subject of your    11 discussion?    12 A. Well, how much to pay, like, the IRS    13 each month. And he set it up for me and all that    14 stuff, you know, did the paperwork or whatever had    15 to be done.    16 Q. Okay. Do you feel he was cooperative    17 with you?    18 A. Absolutely.    19 Q. Did you feel while you were working    20 there that you had a decent relationship with    21 Steve?    22 A. I would like to think so.    23 Q. And in the course of these -- well,    24 strike that.    25 Can you estimate how many conversations</p>
<p style="text-align: right;">Page 51</p> <p>1 or I sat somewhere for a half an hour on the way    2 back from my morning route, I don't see what the    3 difference is. I don't see how that could effect    4 the end time of me returning back to the shop.    5 Q. In that conversation, was Mr. Moskal    6 angry at you, in your view?    7 A. I don't know if he was angry at me or    8 angry at the fact that he had to come down and give    9 me this type of write-up. I don't really know, but    10 he seemed angry, yeah.    11 Q. I mean, the first time you called    12 asking about, you know, getting paid OT for    13 skipping lunch, and he said take your, you know,    14 take your half hour break?    15 A. He seemed a little annoyed, maybe, but    16 not angry. And I didn't ask to be paid OT for not    17 receiving lunch. I just wanted the adjustment of    18 my check not being docked. It's not like I worried    19 I want the half hour of time-and-a-half for not    20 working through lunch.    21 Q. Okay. Now, you had your wages    22 garnished from Empire. Is that correct?    23 A. Yes.    24 Q. What's that?    25 A. I ended up making an agreement to</p>	<p style="text-align: right;">Page 53</p> <p>1 you might have had with Steve about the    2 garnishment?    3 A. Half a dozen, maybe something like    4 that. It was really straight forward.    5 Q. Did it ever come up in the context of,    6 you know, your money issues that, you know, the    7 overtime issue with lunch or that never was    8 discussed?    9 A. I don't really remember. I may have    10 said to him or somebody that, you know, I'm not    11 okay with the fact that I can't take my lunch and    12 be docked with it at the same time. It was never    13 pinpointed on lunch being overtime included. It    14 was just a simple fact that how many hours I worked    15 if, you know, if the hours that I'm docked it's    16 overtime hours. I mean, I'm already into overtime    17 and, you know, barely took these lunches after    18 being criticized on stopping for more than 15, 20    19 minutes. So that's, you know, it's clear that it's    20 overtime rate. It's already over the 40 hours, but    21 it wasn't labeled as that. It was labeled, I'm not    22 okay with working half an hour for free.    23 Q. Well, I guess, I was focusing on those    24 conversations about the garnishment. Do you    25 remember them coming up or is that more -- well,</p>

Page 54	Page 56
<p>1 just answer the question. Do you remember that 2 actually coming up?</p> <p>3 A. No.</p> <p>4 Q. Now, when you just discussed earlier 5 about how you felt that it wasn't fair that you're 6 basically working half hour for free, did you tell 7 Steve that?</p> <p>8 A. I can't remember. I mean, like, I may 9 have. I'm not usually a person to keep stuff like 10 that bottled up for too long without say something 11 to somebody. So if I didn't say something to 12 somebody, I would be kind of shocked, but I can't 13 recollect who.</p> <p>14 Q. Okay.</p> <p>15 A. I mean, I knew it wasn't going to get 16 anywhere just by what was told to me about taking 17 lunch and bring a cooler. It was so many times 18 that I just gave up. I just, you know.</p> <p>19 Q. Well, I'm trying to pinpoint who you 20 told. And you didn't tell Steve that you thought 21 it was wrong to be working for a half hour for 22 free, at least, you don't remember that?</p> <p>23 A. Right.</p> <p>24 Q. Do you remember telling Jeff that?</p> <p>25 A. I think I may have told Jeff that,</p>	<p>1 think he was already -- he was already terminated 2 from the company.</p> <p>3 Q. Other than Jose, do you remember saying 4 that to anyone else?</p> <p>5 A. Mike Dimonte.</p> <p>6 Q. You actually remember saying that to 7 Mike Dimonte?</p> <p>8 A. Yeah, saying, this is, you know, 9 basically, BS.</p> <p>10 Q. Yeah.</p> <p>11 A. So it wasn't, you know, it wasn't like 12 a long discussion and in the middle of trying to 13 load our trucks and get out the door. It was just 14 like this is BS. Once we work and we can't stop 15 and take a break from just traffic in general for 16 that 30 minutes or even, you know, even a solid 20 17 without being harassed about it. So.</p> <p>18 Q. What Dimonte say, if you remember?</p> <p>19 A. He was just pretty much like, yeah, 20 couple more months I'm retired. So whatever, he 21 was just wrote it off.</p> <p>22 Q. Okay. Do you think you had one 23 conversation with Dimonte about that shortly before 24 he retired?</p> <p>25 A. Maybe. I don't really remember. Like</p>
Page 55	Page 57
<p>1 yeah.</p> <p>2 Q. Do you remember telling him that?</p> <p>3 A. I'm pretty sure I did, because of the 4 whole fact of him bringing, like, the cooler up, 5 is, basically, driving and eating.</p> <p>6 Q. And do you have a specific recollection 7 of telling Jeff?</p> <p>8 A. Not specifically.</p> <p>9 Q. Is that an assumption on your part, 10 based on your personality that you don't keep 11 things bottled up?</p> <p>12 A. No. I mean, I can say I'm almost 100 13 percent positive I reacted to one of his times 14 saying about bringing a cooler, about I'm not okay 15 with that, you know, that I disagree with your 16 theory on taking lunch, you know. It doesn't have 17 anything to do with me being outspoken or whatever.</p> <p>18 Q. Other than believing you told Jeff 19 that, and anyone else you believe you told at 20 Empire?</p> <p>21 A. I probably said that to everybody in 22 the warehouse that I'm not okay with things.</p> <p>23 Q. Do you remember saying that to anyone 24 in the warehouse?</p> <p>25 A. I said it before to Jose before, but I</p>	<p>1 I said, it wasn't anything in length to that 2 extent.</p> <p>3 Q. Well, I guess, I'm just trying to 4 figure out if you actually have a specific 5 recollection of having that conversation with 6 Dimonte?</p> <p>7 A. I have said something to him before 8 that, yes.</p> <p>9 Q. That it's BS?</p> <p>10 A. Yeah.</p> <p>11 Q. Okay. And you think you said that 12 shortly before he was going to retire, he said 13 something about retirement?</p> <p>14 A. Yeah. He said something like, I guess, 15 pretty much just maybe go along with my 16 conversation to agree, but not to be on the same 17 page at the same time, you know, or maybe not to be 18 heard by anybody, probably didn't want to, you 19 know, sound like he was taking sides in front of 20 management there. Who knows.</p> <p>21 Q. Who was management in Cinnaminson?</p> <p>22 A. Jeffrey Bealer.</p> <p>23 Q. Anyone else?</p> <p>24 A. I mean, maybe Martha Milligan. And I 25 think one other person that used to be a driver</p>

<p style="text-align: right;">Page 58</p> <p>1 became a manager. I can't really remember his 2 name.</p> <p>3 Q. Did you ever talk to Martha Milligan 4 about the lunch issue?</p> <p>5 A. Not that I can remember, no. I didn't 6 really talk to her about much.</p> <p>7 Q. Did you talk to her about anything?</p> <p>8 A. When I was rear-ended on the Turnpike 9 that was it, because I was a little bit shoooken up. 10 She was, like, don't worry about this, first time, 11 blah, blah, blah. I guess trying to comfort me 12 about it.</p> <p>13 Q. Other than Mike Dimonte and Jose 14 Cologne, is there anyone else that you discussed 15 the lunch issue with, other than Bealer down in 16 Cinnaminson?</p> <p>17 A. Not that I can remember.</p> <p>18 Q. Other than your attorney, is there 19 anyone not associated with Empire that you spoke 20 about your lunch issues with?</p> <p>21 A. My lunch issues?</p> <p>22 Q. Yeah.</p> <p>23 A. Yeah, probably everybody I know. 24 Sorry.</p> <p>25 Q. Do you remember having specific</p>	<p style="text-align: right;">Page 60</p> <p>1 spoke with?</p> <p>2 A. My mom, my brother, both my sisters, my 3 stepfather.</p> <p>4 Q. Is there any one of them you feel you 5 had the most communication with about your 6 unhappiness with the lunch policy at Empire?</p> <p>7 A. I live with my brother, so it's -- and 8 my stepfather, but he's not really home much. He 9 travels for business, but I'm pretty close to my 10 little brother. So I would say he would have heard 11 most of it more than anyone.</p> <p>12 Q. Right. What's his name?</p> <p>13 THE WITNESS: Do I have to answer that?</p> <p>14 MR. MILLER: Yup.</p> <p>15 A. Dalton.</p> <p>16 Q. Does he live with you now?</p> <p>17 A. Yes.</p> <p>18 Q. How old is he?</p> <p>19 A. 20.</p> <p>20 Q. And do you remember having frequent 21 conversations with him about your unhappiness with 22 Empire's lunch policy?</p> <p>23 A. No, like, anything frequent? I mean, 24 we're not -- we don't go around all day just 25 complaining about life. I would come home and this</p>
<p style="text-align: right;">Page 59</p> <p>1 discussion with any particular person?</p> <p>2 A. Any discussion that would be any 3 different than what I just basically said to 4 everybody about how things are run with the whole 5 lunches there being BS.</p> <p>6 Q. Right. So that's what I'm trying to 7 figure out, because you're saying I talked to 8 everybody. I'm trying to find out who those people 9 are.</p> <p>10 A. You're saying not relevant to Empire?</p> <p>11 Q. No, I'm saying people other than 12 Empire.</p> <p>13 A. Okay.</p> <p>14 Q. Within Empire you said, if I understand 15 this correctly.</p> <p>16 A. You asked me people other than Empire, 17 meaning, like, anybody?</p> <p>18 Q. Yes.</p> <p>19 A. Like my family and friends?</p> <p>20 Q. Yes.</p> <p>21 A. Yeah. I mean, naturally, I would, you 22 know, I would talk to my family about what's going 23 on in my life. Yeah.</p> <p>24 Q. Okay. When you say about talking to 25 your family, who are the family members that you</p>	<p style="text-align: right;">Page 61</p> <p>1 is BS, basically, or, you know, like, if I was 2 having a conversation with my lawyer on the phone 3 and he tried to talk to me. I'd be, like, quiet, 4 I'm on the phone with my lawyer. Oh, what's that 5 about? I would explain to him. It wasn't like I 6 spent my time home complaining about work. Like 7 I have a gift of turning off work when I walk out the 8 door of work.</p> <p>9 Q. So just so I understand, your 10 discussions with your family were very?</p> <p>11 A. Brief.</p> <p>12 Q. Brief. And didn't go into any kind of 13 detail about what you're unhappy with. Is that 14 right?</p> <p>15 A. Besides just the fact that I didn't get 16 anywhere close to time to be considered a lunch 17 period, to be docked 30 minutes. And that they 18 told me to pack a lunch every day to try to get 19 around, you know, compensating that 30 minutes for 20 lunch; that was, like, the extent of, you know, 21 getting into detail with my family and friends.</p> <p>22 Q. And you said that on occasion, but not 23 all that often. Is that right?</p> <p>24 A. Yeah, a few times. It wasn't -- 25 unnecessary to keep going on about it. It didn't</p>

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<p>1 change throughout until I was terminated, so.</p> <p>2 Q. Did you ever pack a lunch or take a</p> <p>3 cooler?</p> <p>4 A. Well, after getting criticized about</p> <p>5 it, yeah, as much as I could. I mean, I can't go</p> <p>6 all day not eating nothing and drinking nothing for</p> <p>7 nine, 10 hours a day, especially if I have a truck</p> <p>8 with no air conditioning.</p> <p>9 Q. Did anyone ever tell you that you would</p> <p>10 be fired if you continued your practice of taking</p> <p>11 lunches in a manner contrary to what Empire policy</p> <p>12 was?</p> <p>13 A. I guess eventually, yes, I've been told</p> <p>14 that would have happened after, like, suspensions</p> <p>15 and stuff like that which I, you know, didn't want</p> <p>16 that to happen just as much as not being</p> <p>17 terminated.</p> <p>18 Q. Were you ever suspended?</p> <p>19 A. No.</p> <p>20 Q. Were you ever threatened with</p> <p>21 suspension?</p> <p>22 A. Yeah.</p> <p>23 Q. Who threatened you?</p> <p>24 A. Well, Steve warned me or not say</p> <p>25 threatened, but he warned me about, you know,</p>	<p>1 was the whole thing of what I was being written up</p> <p>2 for which was, I guess, you could say unfair,</p> <p>3 according to me or whatever.</p> <p>4 Q. Right.</p> <p>5 MR. HERTZBERG: Could you mark this as</p> <p>6 the next exhibit, please.</p> <p>7 (Exhibit JR-4, Employee Written Warning</p> <p>8 Notice dated 1/31/11, was marked for</p> <p>9 identification.)</p> <p>10 (A recess transpired.)</p> <p>11 Q. I've given you an Employee Written</p> <p>12 Warning Notice, dated 1/31/11.</p> <p>13 A. Okay.</p> <p>14 Q. Is that your signature on the bottom of</p> <p>15 the page?</p> <p>16 A. Yes.</p> <p>17 Q. You see it says: "Failing to drop</p> <p>18 money in an envelope at the end of the day. The</p> <p>19 money turned up two days later."</p> <p>20 A. Yes.</p> <p>21 Q. Do you remember that incident?</p> <p>22 A. Yes.</p> <p>23 Q. What was that about?</p> <p>24 A. Exactly what it says. I had the</p> <p>25 paperwork and I had my money counted out, like,</p>
Page 63	Page 65
<p>1 called it unauthorized stops if it was to continue</p> <p>2 that, you know, further disciplinary action would</p> <p>3 have to be taken, like, suspension and then</p> <p>4 thereafter termination.</p> <p>5 Q. Now, when did that conversation take</p> <p>6 place? Was that toward the end of your employment?</p> <p>7 A. Maybe, you know, halfway through or I</p> <p>8 can't really exactly remember. I don't think it</p> <p>9 was towards the end of it because I wasn't</p> <p>10 terminated for unauthorized stops or lunches.</p> <p>11 Q. So you took what Steve had to say in</p> <p>12 terms of; if this keeps up, you could be suspended</p> <p>13 or <u>terminated</u> as a threat?</p> <p>14 A. I guess so. Stuff, like, stop going to</p> <p>15 my house. I stopped taking, you know, basically,</p> <p>16 stopped taking a rest stop. That's, basically,</p> <p>17 what I wanted to do was take a rest from driving,</p> <p>18 so I stopped doing that period.</p> <p>19 Q. So you don't believe he was just sort</p> <p>20 of telling you how the process works if you keep</p> <p>21 getting written up?</p> <p>22 A. Well, yeah, that's what I meant. Like</p> <p>23 he's, basically, warning me of what's going to</p> <p>24 happen as far as company policy if I keep getting</p> <p>25 written up for what I was being written up for. It</p>	<p>1 prior to getting back to the shop. I did it at my</p> <p>2 last stop. And I just forgot to put the stuff in</p> <p>3 the envelope with my drop. And it was still in my</p> <p>4 binder that I use, like, with customer signatures.</p> <p>5 And I was flipping through to get -- I used to make</p> <p>6 copies of stuff in case I had to revert back for</p> <p>7 parts for customers, just to make it easier for me.</p> <p>8 I was flipping through, all right. What's this</p> <p>9 money from? When I realized I forgot to drop it</p> <p>10 with my paperwork. So it was in my binder the</p> <p>11 whole time. Just an honest mistake trying to rush</p> <p>12 out at the end of the day.</p> <p>13 Q. I recognize it's from 2011. Can you</p> <p>14 remember about how much money you're talking about?</p> <p>15 A. Not exactly. I mean, it -- most of the</p> <p>16 time it was usually I dealt with a couple hundred</p> <p>17 bucks a day.</p> <p>18 Q. And do you recognize the management</p> <p>19 signature?</p> <p>20 A. No, not really. I think it was Steve,</p> <p>21 but.</p> <p>22 Q. Do you remember talking about that with</p> <p>23 Steve?</p> <p>24 A. Yes.</p> <p>25 Q. Over the course of your time with</p>

<p style="text-align: right;">Page 66</p> <p>1 Empire, did you receive more than three written 2 warnings?</p> <p>3 A. More than three? I can't -- I don't 4 exactly remember, but I think three might have been 5 the most. Written warnings or verbal and written?</p> <p>6 Q. Verbal and written.</p> <p>7 A. Yeah, probably more than three, yeah. 8 This is just marked verbal, so I didn't know what 9 you meant by that.</p> <p>10 Q. Okay. And just so I'm clear, going 11 back to something that we talked about. When you 12 said people took lunch in the warehouse, are you 13 talking about in between the routes, right; come 14 back from the morning, have lunch, then go out in 15 the afternoon. Is that right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay.</p> <p>18 MR. HERTZBERG: Could you mark this as 19 the next one, please.</p> <p>20 (Exhibit JR-5, Employee Written Warning 21 Notice dated 6/30/11, was marked for 22 identification.)</p> <p>23 Q. Do you remember this warning?</p> <p>24 A. Yes.</p> <p>25 Q. Do you see where it says: "Excessive</p>	<p style="text-align: right;">Page 68</p> <p>1 regards to your remarks, that the fact that you 2 stopped at home in and of itself wasn't the cause 3 of the discipline?</p> <p>4 A. I'm sorry, say that again?</p> <p>5 Q. If you read the remarks it says: 6 "Failure to communicate with supervisors or 7 Garfield office regarding excessive stops at home." 8 It says that, right?</p> <p>9 A. Yeah. I failed to notify them about 10 it.</p> <p>11 Q. Isn't that the reason for the warning, 12 assuming that the remarks are accurate, that you 13 failed to communicate that you were stopping at 14 home?</p> <p>15 A. Right, correct.</p> <p>16 Q. And was that the problem with many of 17 your stops at home, that you were told you have to 18 let us know where you are?</p> <p>19 A. I don't think so. I think it was that 20 just that the time being spent other than working.</p> <p>21 Q. Do you recall in any conversation about 22 unauthorized stops, you being advised that a 23 significant problem with that is your failure to 24 communicate that you were doing so and that people 25 didn't know where you were?</p>
<p style="text-align: right;">Page 67</p> <p>1 stops at home with company vehicle throughout the 2 workday."?</p> <p>3 A. Yes.</p> <p>4 Q. Is that your signature on the bottom?</p> <p>5 A. Yes.</p> <p>6 Q. And do you recognize the management 7 signatures?</p> <p>8 A. No. Well, the one signature I think is 9 Steve's at the top. And I don't recognize...</p> <p>10 Q. Do you remember the context of the 11 discussion here?</p> <p>12 A. Somewhat, yes.</p> <p>13 Q. What's your recollection?</p> <p>14 A. They asked me why I stopped at my house 15 more than once in the workday. At the time that 16 this happened, I believe that the vehicle I was 17 driving did not have air conditioning. And I 18 probably stopped there, I think, two times in the 19 course of leaving and coming back, on the way back, 20 to stop to grab more -- something to drink. I 21 mean, there was days there where it was so hot, I 22 would have a cold frozen bottle and it would be 23 melted in a couple of hours and I would have a 24 drink by then.</p> <p>25 Q. Would you agree that, at least as</p>	<p style="text-align: right;">Page 69</p> <p>1 A. No, I don't recall that. They know 2 where you're at all the time. They have a tracking 3 device in the truck.</p> <p>4 Q. Okay.</p> <p>5 A. And I didn't, when it was on the way 6 back, I didn't -- I wasn't informed that we had to 7 inform them where we were taking our break or 8 lunch. So to say, I was never told that.</p> <p>9 Q. Well, after you're written up there for 10 failing to communicate, did you communicate where 11 you were taking lunch?</p> <p>12 A. If I did take a lunch, yeah.</p> <p>13 Q. And who did you advise?</p> <p>14 A. I would call Jeff Bealer. He sets up 15 the afternoon route. So I would call him, that way 16 he could have time to adjust whatever adjustments, 17 if needed be for whatever time I was taking. But 18 it was, you know, 10 minutes or something here or 19 there.</p> <p>20 Q. So Jeff Bealer made the adjustments if 21 you called up and said, I'm taking a 10-minute 22 break?</p> <p>23 A. No, if I was going to take a lunch.</p> <p>24 Q. You mean a half hour lunch?</p> <p>25 A. Right, but after, that didn't last that</p>

<p style="text-align: right;">Page 70</p> <p>1 long.</p> <p>2 Q. Okay. So after that point, you stopped</p> <p>3 communicating as to what breaks you were taking?</p> <p>4 A. I mean, I guess you could say that I</p> <p>5 didn't call in every time I passed a 7-Eleven or</p> <p>6 something like that, no.</p> <p>7 Q. Do you know if there was any company</p> <p>8 policy about communicating your location?</p> <p>9 A. No. I wasn't aware of one, if it was a</p> <p>10 short stop.</p> <p>11 Q. Okay. To the best of your</p> <p>12 recollection, there was no company policy to advise</p> <p>13 Empire if you were deviating from your designated</p> <p>14 route?</p> <p>15 A. Yes, I think there is a policy for</p> <p>16 that, if I was deviating -- do you mean going off</p> <p>17 course?</p> <p>18 Q. Right.</p> <p>19 A. Well, I don't really believe that that</p> <p>20 was off course, so.</p> <p>21 Q. Okay. I'm just asking if you know if</p> <p>22 there is a policy?</p> <p>23 A. Yeah, I do know.</p> <p>24 Q. And to the best of your recollection,</p> <p>25 you never went off course. Is that correct?</p>	<p style="text-align: right;">Page 72</p> <p>1 They didn't issue a company cell phone. So I had a</p> <p>2 prepaid, I have to communicate with them, and my</p> <p>3 phone gets shut off then, you know.</p> <p>4 MR. HERTZBERG: Could you mark the next</p> <p>5 one, please.</p> <p>6 (Exhibit JR-6, Employee Written Warning</p> <p>7 Notice dated 12/8/11, was marked for</p> <p>8 identification.)</p> <p>9 Q. Okay. I'm showing you JR-6, which is</p> <p>10 an Employee Written Warning Notice dated December</p> <p>11 8, 2011. And do you remember that warning?</p> <p>12 A. No.</p> <p>13 Q. Do you recall, generally, around that</p> <p>14 time there being an issue with check payments?</p> <p>15 A. I do remember a time. I don't know if</p> <p>16 it was this time, because one of my customers</p> <p>17 forgot to sign their check. And I didn't take</p> <p>18 notice to it, so pretty much just walked, left the</p> <p>19 customer's location with an unsigned check, so it's</p> <p>20 basically useless. I mean, please see attached</p> <p>21 memo, so that's not included with this paper so I</p> <p>22 can't really...</p> <p>23 Q. It says: "Please pay attention." At</p> <p>24 the bottom, right?</p> <p>25 A. Right. That's why I'm saying it's</p>
<p style="text-align: right;">Page 71</p> <p>1 A. No, not never. I've informed them if I</p> <p>2 was going off course.</p> <p>3 Q. So any time you went off course, to the</p> <p>4 best of your recollection, you advised Empire that</p> <p>5 you were doing that. Is that right?</p> <p>6 A. I let somebody know, yeah, either Jeff</p> <p>7 Bealer --</p> <p>8 Q. You'd call in?</p> <p>9 A. Yes, or if it was something I knew</p> <p>10 about prior to leaving the shop, I would ask him or</p> <p>11 let him know.</p> <p>12 Q. Okay. And what would his response be,</p> <p>13 if you recall, to your advising that you were going</p> <p>14 off route?</p> <p>15 A. I, most of the time, it wasn't a</p> <p>16 problem.</p> <p>17 Q. No? Okay.</p> <p>18 A. It would be, I would say, I would take</p> <p>19 it off of any time, according to lunch, you know.</p> <p>20 I would sacrifice time off of that if I had to do</p> <p>21 something like that.</p> <p>22 Q. What kind of circumstances would there</p> <p>23 be that would cause you to go off route?</p> <p>24 A. Like when I forgot my wallet or if I</p> <p>25 had to stop. I paid my cell phone bill uptown.</p>	<p style="text-align: right;">Page 73</p> <p>1 probably something to do with a customer signature.</p> <p>2 I didn't pay attention to everything on the check.</p> <p>3 Q. Did that happen more than once?</p> <p>4 A. Yeah, couple times.</p> <p>5 Q. Was it a problem you were spoken to</p> <p>6 more than once?</p> <p>7 A. More than once, probably, yeah.</p> <p>8 Q. Okay.</p> <p>9 MR. HERTZBERG: Could you mark this as</p> <p>10 the next document, please.</p> <p>11 (Exhibit JR-7, Employee Written Warning</p> <p>12 Notice dated 5/22/12, was marked for</p> <p>13 identification.)</p> <p>14 Q. I'm showing you JR-7, a document dated</p> <p>15 May 22, 2012, entitled Employee Written Warning</p> <p>16 Notice. It says: You were warned personally by</p> <p>17 myself on January 18, 2011 in regards to monies not</p> <p>18 dropped at safe." Do you see where it says that?</p> <p>19 A. Yes.</p> <p>20 Q. Tell me about what happened?</p> <p>21 A. I forgot to drop the payments in the</p> <p>22 safe. It was in my clip board.</p> <p>23 Q. Sort of what happened before that you</p> <p>24 described?</p> <p>25 A. Yeah.</p>

<p style="text-align: right;">Page 74</p> <p>1       Q. Do you remember who you discussed this 2 with? 3       A. Steven and I think Jeffrey Bealer also. 4       Q. As compared with the discussions about 5 your, you know, your lunch issue, was this kind of 6 discussion one that had a more serious tone? 7       A. Naturally, yeah. 8       Q. Do you remember how much money you 9 forgot to drop in the safe on this occasion? 10      A. No. 11      MR. HERTZBERG: Could you mark this as 12 the next document, please. 13      (Exhibit JR-8, E-mail Thread, was 14 marked for identification.) 15      Q. Okay. I'm showing you an e-mail thread 16 that runs from June 27, 2012 to June 29, 2012. And 17 just read through that and let me know -- do you 18 understand what happened in this incident? 19      A. This might have been a personal check 20 that I accepted. 21      Q. Okay. And you see in the course, 22 there's a couple of incidents -- strike that. 23      Do you see in the course of this 24 thread, there's a couple of comments that you just 25 dodged a write-up?</p>	<p style="text-align: right;">Page 76</p> <p>1       this as the next document, please. 2       (Exhibit JR-9, Employee Written 3       Warning Notice dated 10/3/12, was 4       marked for identification.) 5       Q. Okay. I'm showing you Exhibit 9, dated 6 October 3, 2012, Employee Written Warning Notice. 7 And is that your signature under employee 8 signature? 9       A. Yes. 10      Q. Do you see it regards speeding 11 violations, correct? 12      A. Well, according to their Geotab, yeah. 13 I didn't receive a ticket from the police 14 department. 15      Q. Well, were you driving that fast? 16      A. I mean, I don't believe so. I argued 17 this fact before. Most of their vehicles could 18 only go, like, a maximum speed of 70 something 19 before a governor kicked in. 20      At this time, I may have been on a 21 highway and passed somebody. I don't believe it 22 was anywhere near 91 miles an hour. So I don't 23 know how accurate their Geotab was in reporting 24 that. Maybe it's not calibrated. 25      Q. Well, before you signed off on this, do</p>
<p style="text-align: right;">Page 75</p> <p>1       A. Right. 2       Q. Do you see in the middle of the second 3 page, there's an e-mail from Steve to Jeff 4 indicating that you should have called? Do you see 5 where it says that? 6       A. Yeah. 7       Q. Was this discussed with you about a 8 failure to communicate? 9       A. It was discussed with me. I don't know 10 if it was on the lines of failure to communicate. 11      Q. Looking back at this, should you have 12 called? 13      A. Yeah, I didn't know if it was a 14 personal check, really, at the time. 15      Q. Okay. 16      A. We had one customer also on my route 17 that was, I guess, given special privileges as far 18 as personal checking. So I may have confused that 19 as that being okay, instead of communicating. So 20 that's when I found out about our no personal check 21 policy. 22      Q. You haven't heard anything about a no 23 personal check policy with a new customer? 24      A. No. 25      MR. HERTZBERG: Okay. Could you mark</p>	<p style="text-align: right;">Page 77</p> <p>1       you remember having any discussion where you 2 questioned the Geotab? 3       A. Yeah, I said that to him before. I 4 mean, one of their -- the write-ups I've written 5 something next to my signature about one of the 6 vehicles. I can't exactly remember what write-up 7 that was, but I still haven't seen that yet, so. 8       Q. Had you been told more than once about 9 the fact that, at least, Empire believed that you 10 were speeding? 11      A. I think another time. 12      MR. HERTZBERG: Okay. Could you mark 13 this as the next one, please. 14      (Exhibit JR-10, Employee Written 15      Warning Notice dated 11/29/12, was 16      marked for identification.) 17      Q. Okay. I'm showing you exhibit JR-10, 18 Employee Written Warning Notice, dated November 29, 19 2012. And under remarks it reads: "You were 20 verbal warned on August 24, 2012 of making stops 21 not relating to your delivery log. This incident 22 was regarding stopping home. Just recently you had 23 made four additional stops on November 23, 2012 24 that were not part of your schedule. We talked in 25 length on how this effects the entire staff on</p>

<p style="text-align: right;">Page 78</p> <p>1 November 28, 2012. Any future incident will result 2 in a one-day suspension and/or termination." Do 3 you recall this warning? 4 A. Yeah, somewhat. 5 Q. Okay. What do you recall about it? 6 A. I believe this was maybe a day after 7 Thanksgiving or something. I could be mistaken. I 8 think I stopped, what I believe, was my mother's 9 house at the time, my previous residence, but I was 10 not living there on this date. 11 Stopped for a quick grab a turkey 12 sandwich that she made for me. I was there for 13 maybe a total of seven minutes. I don't exactly 14 remember the other stops. It might have been a 15 7-Eleven or smoke shop on the way back on the 16 bridge that I come over to come back with. I 17 believe all these, like, total altogether were not 18 exceeding anything as far as 30 minutes and not out 19 of the way on my route. So I don't really -- I do 20 remember them saying something about that though. 21 It was the day after Thanksgiving. I stopped there 22 for lunch. I didn't have any money for lunch so 23 that part I do remember. 24 Q. Did you, in the course of your routes, 25 periodically stop at smoke shops?</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. Do you remember him being there? 2 A. I mean, I think he was there. I can't 3 exactly remember. But I recall times where both 4 him and Steve Moskal were present in the room 5 during, you know, them giving me the write-up. 6 Q. Okay. And where in the office did this 7 conversation take place? 8 A. I guess you could say the conference 9 room or the room where we dropped our paperwork and 10 money in. I guess that's what you would call it, a 11 conference room. 12 Q. How did you find out that you were 13 being warned on this incident? 14 A. I came -- when I came back in, maybe at 15 the end of the day, they called me in the office. 16 Q. And tell me to the best of your 17 recollection what was said and by whom? 18 A. Steve and Bealer, basically, said that, 19 you know, about not making these stops and not 20 communicating about it or stuff like that. I, 21 basically, like I said, you know, if I took a lunch 22 or whatever, you know, I got written up anyway for 23 stopping somewhere. So I didn't really see a need 24 to communicate if I'm making a couple, 25 couple-minute stops.</p>
<p style="text-align: right;">Page 79</p> <p>1 A. Couple times a week maybe, generally, 2 usually, get my cigarettes like, you know, few 3 packs at a time. So it's not like I needed to deal 4 with that every day. And it's only with, you know, 5 on certain routes. If it was literally on the way 6 back or on the way there, there was nothing out of 7 the way. 8 Q. Do you remember being warned in or 9 around August 24, 2012 of making stops not relating 10 to your delivery log? 11 A. Yeah. 12 Q. Do you remember what was said about 13 that? 14 A. I don't remember exactly what was said 15 about it, no. I remember being warned about it 16 though. 17 Q. So did you meet with Empire personnel 18 in connection with this warning notice? 19 A. Steve gave me the write-up, yeah. 20 Q. Where did the meeting take place? 21 A. In Cinnaminson. 22 Q. Okay. Was anyone else there besides 23 you and Steve? 24 A. I think Bealer might have been in the 25 room with us also, Jeffrey Bealer.</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. Were you asked to make efforts to 2 communicate even with short stops? 3 A. I don't think it was labeled as short 4 or long, just stops period, that I was asked to 5 communicate with. 6 Q. And is it fair to say you had been 7 asked to do that sometime prior to this warning 8 notice? 9 A. Yeah. 10 Q. And you decided not to do that because 11 you thought it wouldn't make a difference anyway. 12 Is that right? 13 A. Right. I'm still going to get written 14 up anyway, so. 15 Q. To the best of your recollection, 16 exactly what did Steve Moskal say? Did he start 17 the conversation? 18 A. I can't remember. 19 Q. Okay. Do you remember what you said? 20 A. No, not exactly, no. 21 Q. Do you remember anything you said in 22 that conversation? 23 A. I apologized for it, but I mean, I 24 didn't really get anywhere with it. I remember 25 explaining the fact of stopping home. I'm sorry,</p>

<p style="text-align: right;">Page 82</p> <p>1 stopping at my mother's house at the time to grab a    2 turkey sandwich off of her that I had called her    3 and asked her to make. I know I wasn't there for    4 that long. I walked in, picked it up and left.    5 And I remember that part I explained.</p> <p>6 Q. You don't remember anyone saying words    7 to the effect; well, you just got to let us know?</p> <p>8 A. Yeah, but, again, I was never really    9 like that.</p> <p>10 Q. I'm sorry, what did you say? You never    11 liked that?</p> <p>12 A. It was never really like that. I mean,    13 they say that, but it was never, you know, really    14 like that. It was never really approved to stop    15 anywhere and have the whole lunch then or anything    16 that added up to 20 minutes.</p> <p>17 MR. HERTZBERG: Can you mark this as    18 the next document, please.</p> <p>19 (Exhibit JR-11, Driver Notice and    20 Exchange Report, was marked for    21 identification.)</p> <p>22 Q. Okay. I'm showing you what's been    23 marked JR-11. And it's a Commonwealth of    24 Pennsylvania, Driver Notice and Exchange Report,    25 and it's dated February 11, 2013.</p>	<p style="text-align: right;">Page 84</p> <p>1 assumed that it was his assumption. I mean, we had    2 to wait there for a while to get there. So it    3 wasn't like he clocked me or anybody else at a    4 certain speed.</p> <p>5 Q. Were you aware that there was a policy    6 at Empire that they reserve the right to terminate    7 people who have rear-ended cars?</p> <p>8 A. No, I wasn't.</p> <p>9 Q. Okay.</p> <p>10 A. That wasn't even explained to me the    11 day I came back from the accident.</p> <p>12 Q. Were you aware, well, strike that.    13 So what were you told when you were    14 terminated?</p> <p>15 A. When I was terminated? Do you want to    16 know what I was told when I was terminated or in    17 relation to this?</p> <p>18 Q. What were you told when you were    19 terminated?</p> <p>20 A. I was told by Jeffrey Bealer that    21 whoever is in charge up in Empire, you know, at the    22 main branch, held me responsible for this accident,    23 but that wasn't the coin flip of me being    24 terminated. The coin flip of me being terminated    25 was, they assumed I used a company vehicle and went</p>
<p style="text-align: right;">Page 83</p> <p>1 A. Okay.</p> <p>2 Q. And have you seen this before today?</p> <p>3 A. Yeah.</p> <p>4 Q. And when did you first see this?</p> <p>5 A. The day of the accident on the PA    6 Turnpike.</p> <p>7 Q. Do you see under about two-thirds of    8 the way down the page where it says violations?</p> <p>9 A. Okay.</p> <p>10 Q. It says: Driving too fast for    11 conditions?</p> <p>12 A. Yeah, I see that.</p> <p>13 Q. What were the conditions?</p> <p>14 A. It was, like, somewhat just had got    15 done raining, so I'd say 10 minutes. I was just    16 going with the flow of traffic though.</p> <p>17 Q. Did you tell the police that you were    18 going with the flow of traffic?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Did you notice that he put    21 driving too fast for conditions?</p> <p>22 A. Yes.</p> <p>23 Q. Did you say anything about that?</p> <p>24 A. Well, I mean, I wasn't given a ticket    25 or charged with anything. So, I mean, I just</p>	<p style="text-align: right;">Page 85</p> <p>1 off course of my delivery route, clocked out of —    2 actually, clocked out this time for lunch to go    3 cash my check at the check cashing place. But that    4 particular day I had somebody else's vehicle, so    5 they're used to me not coming in with a vehicle.    6 And I clocked out and I took my personal vehicle to    7 cash my check and was back in 27 minutes. And then    8 I continued to work by, you know, loading up the    9 truck and getting in the company vehicle, which    10 Jeffrey Bealer was not aware of. He just assumed    11 that I used the company vehicle and went off course    12 in my route, on my lunch break, to cash my check,    13 which the Geotab device will clearly show that the    14 vehicle stayed at the Cinnaminson location when I    15 clocked out.</p> <p>16 Q. So let me get it straight. Bealer said    17 that management was terminating you because you    18 misused company property to go and cash your check?</p> <p>19 A. Yes, basically.</p> <p>20 Q. Did you ever hear that from anyone else    21 other than Bealer?</p> <p>22 A. No.</p> <p>23 Q. Go ahead.</p> <p>24 A. I never received a written termination    25 letter as well, so.</p>

<p style="text-align: right;">Page 86</p> <p>1 Q. Did you ever ask Steve Moskal about 2 this situation that you thought there was a 3 mistaken belief about what you were doing?</p> <p>4 A. No.</p> <p>5 Q. Did you tell Bealer that wasn't the 6 case?</p> <p>7 A. Yes.</p> <p>8 Q. And what did he say?</p> <p>9 A. I said it was -- he said, well, they're 10 still holding you at fault for the accident, which 11 it took them, what, you know, two weeks to figure 12 that part out from the date of the accident where 13 they terminated me. That's a little bit strange.</p> <p>14 Q. So when Bealer told you he actually 15 used the words, "flip of the coin"?</p> <p>16 A. No, but he said, basically, after the 17 whole accident thing, he said, what, I guess, 18 somewhere around; what really topped it off or 19 somewhere along those words, was the fact that I 20 clocked out and I clocked out for lunch to go cash 21 my check.</p> <p>22 Q. Okay. So --</p> <p>23 A. He thought I used the company van to do 24 that.</p> <p>25 Q. Right. So more or less, if I</p>	<p style="text-align: right;">Page 88</p> <p>1 and labeled it as maintenance of, I guess, you 2 could consider it light construction, something 3 like that, building maintenance.</p> <p>4 Q. And how long were you there?</p> <p>5 A. Not even two weeks.</p> <p>6 Q. Oh, okay. Where did you go after that?</p> <p>7 A. Back on unemployment. I, actually, 8 injured myself there.</p> <p>9 Q. What happened?</p> <p>10 A. I was pulling up commercial carpet and 11 it was, like, glued down commercial carpet. And I 12 was like near the end of, like, a strand that I 13 cut. And somehow went up this little step and 14 twisted the wrong way and something in the upper 15 part of my leg popped. And I just went right down. 16 I had no idea how I did it or what happened, but I 17 pretty much drove back to the office and went right 18 to the hospital.</p> <p>19 Q. What was it?</p> <p>20 A. They said it was an upper lumbar or 21 lower lumbar strain, whatever that means. And I 22 needed a referral from, like, my regular doctor in 23 order to get an MRI at the hospital, which I didn't 24 have insurance at the time. And my doctor wanted 25 \$125 to walk into his office, which I also did not</p>
<p style="text-align: right;">Page 87</p> <p>1 understand correctly, Bealer was telling you this 2 was sort of a last straw, like?</p> <p>3 A. Yeah, like, the whole clocking out for 4 the lunch to go cash my check was, like, the last, 5 okay, we've had enough or whatever.</p> <p>6 Q. So they weren't happy at all about the 7 accident. And this was just the last thing they 8 were going to deal with. Is that right?</p> <p>9 A. From how he put it, yeah. But then I 10 said he was incorrect about me using the company 11 vehicle. And he reverted back to, well, there's 12 still the vehicle. Well, I mean, you know, if that 13 was, like, really the case, then I should have been 14 terminated a lot sooner than two weeks.</p> <p>15 Q. Did you take a job after you left?</p> <p>16 A. No, I was on unemployment.</p> <p>17 Q. For how long?</p> <p>18 A. Until September that following year -- 19 that same year, so seven months.</p> <p>20 Q. And where did you get a job then?</p> <p>21 A. Place called EMSL in Cinnaminson.</p> <p>22 Q. What kind of job did you get there?</p> <p>23 A. Maintenance job.</p> <p>24 Q. What kind of maintenance?</p> <p>25 A. Like office and apartment renovations</p>	<p style="text-align: right;">Page 89</p> <p>1 have. So pretty much got left at that, which I 2 talked to a lawyer in Burlington about it and he 3 basically --</p> <p>4 MR. MILLER: Don't say what you talked 5 about with your attorney.</p> <p>6 THE WITNESS: Okay.</p> <p>7 Q. That's right. I should have cut you 8 off there.</p> <p>9 MR. MILLER: That's fine.</p> <p>10 A. Nothing happened, so couldn't be 11 pursued.</p> <p>12 Q. Did you get -- did you take a job 13 eventually after being on unemployment?</p> <p>14 A. No, I haven't had anything. I haven't 15 had anything permanent since then.</p> <p>16 Q. Okay. You do occasional construction 17 jobs?</p> <p>18 A. Once in a while I'll do, like, side 19 jobs, like, with myself, for myself for friends and 20 family, but I have nothing that's, you know, that 21 I'm solidly hired on right now.</p> <p>22 Q. Okay. Are you looking for work?</p> <p>23 A. Yes.</p> <p>24 Q. Are you married?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 90</p> <p>1 Q. Do you have any kids?    2 A. Yes.    3 Q. How many?    4 A. One.    5 MR. HERTZBERG: Could you mark this as    6 the next document, please.    7 (Exhibit JR-12, Check View-Rollup    8 Totals, was marked for identification.)    9 Q. I'm going to show you JR-12 which says,    10 Check View-Rollup totals. Name is Jason, well,    11 Reed, Jason D. And I'll ask you if you recognize    12 this?    13 A. Yes.    14 Q. What is it?    15 A. It's, like, a breakdown, basically, of    16 my pay stubs. So to say that I asked Steve for a    17 few months after I was terminated, because I was    18 having problems with my son's mother, as far as    19 child support goes. And I knew if it was going to    20 end up in court that they're going to want to see,    21 you know, my past employment for whatever updates.    22 Q. In the top there's a fax ledger that    23 says A&amp;C Supply, LLC. Do you see where it says    24 that?    25 A. Yeah.</p>	<p style="text-align: right;">Page 92</p> <p>1 attorneys?    2 A. Yeah, my attorney.    3 Q. How did you find out that there was a    4 website you should put information on?    5 A. On unemployment. The guy at    6 unemployment told me about it. I don't remember    7 his name.    8 Q. How did that come up in your    9 conversation with the unemployment guy?    10 A. Because they pretty much, like, when    11 they had my interview, they were, like, pretty    12 much; okay, the accident that you're in, were you    13 at fault? And I said, "Well, it says speeding    14 violation." He's, like, "Well, did you get a    15 ticket from the police officer?" And I'm like,    16 "No." Well, then you're not at fault. And I told    17 him about, you know, used a company vehicle. Well,    18 this is -- this is all in your favor as far as    19 unemployment goes and he referred me to the site.    20 Q. So you were looking, basically, for    21 unemployment representation?    22 A. Yeah, which I mean I received. I    23 didn't go onto the site until sometime later. I    24 don't have a personal computer. It wasn't like I    25 rushed out of my house to go to it.</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. What is that?    2 A. That's a company that I used to work    3 for. I told you when I was living in East Hudson.    4 Conveniently, I guess, would be the word. They    5 just recently, within the past couple of years,    6 moved into a vacant commercial building directly    7 across the street from my house. So since I knew    8 the guy from prior employment, I walked over there    9 and asked him if I could use his fax machine in    10 order to get the information from the computer to    11 print it out. Like I said, I don't have a personal    12 computer.    13 Q. And Steve was cooperative in getting    14 you this?    15 A. Yes.    16 Q. Now, at the time you spoke with Steve,    17 were you considering filing this suit?    18 A. No, I don't believe so, at the time.    19 Q. Between --    20 A. I filled out stuff on, like, the    21 computer about it, as far as, like, you know,    22 putting what happened out there. I think, like, on    23 a website for, like, lawyers. And they contacted    24 me, so.    25 Q. When you say "they" you mean your</p>	<p style="text-align: right;">Page 93</p> <p>1 Q. Does your current counsel represent you    2 in the unemployment matter?    3 A. No.    4 Q. Okay. So from the standpoint, a guy    5 gave you a website, you should check out to see --    6 well, strike that.    7 Why did the unemployment guy give you    8 this website?    9 A. That's what I couldn't figure out. I    10 mean, I never served any of them, type of people to    11 go out of their way to say stuff like that. I    12 mean, he was a pretty chockly outgoing state person    13 that I've ever dealt with.    14 Q. What did he say why he was giving this    15 to you?    16 A. Well, because, I told him, you know, I    17 thought this was just pretty much an excuse to    18 pretty much, like, get rid of me. And I went into    19 the whole thing about the lunches with him. And he    20 said, it sounds like a wage issue. Here's this    21 website, which I can't even remember. You could    22 type it up and see if somebody contacts you back.    23 Okay. Whatever. I thought it was a shot in the    24 dark. So I didn't really pursue it right away.    25 Q. Okay. Eventually you did and you were</p>

<p style="text-align: right;">Page 94</p> <p>1 contacted by current counsel. Is that right?    2 A. Right. I also read up also too on,    3 like, labor laws and to see if it was something    4 that could be pursued.</p> <p>5 Q. Did you do anything to prepare for this    6 deposition?</p> <p>7 A. What do you mean?</p> <p>8 Q. I mean, did you review any documents?    9 Did you meet with anybody?</p> <p>10 A. Not really, no. I didn't meet with    11 anybody.</p> <p>12 Q. Did you review any documents?</p> <p>13 A. Reading some of these documents, like,    14 that are here in front of me over my phone because    15 that's the only way I could view stuff. It's kind    16 of difficult on your phone. You got to blow stuff    17 up with your fingers. Do you know what I mean?</p> <p>18 Q. Do you remember which ones you looked    19 at?</p> <p>20 A. This is JR-2, the initial    21 interrogatories, I skimmed through them about it.    22 I had, like, this is on, like, my e-mail that I    23 view through my phone.</p> <p>24 Q. You say "this" why don't you identify    25 it.</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. Did you ever speed up because you're    2 behind on your route?</p> <p>3 A. Maybe. Maybe, but I never really, you    4 know, not 91 miles an hour consistently all the way    5 down the highway, no. That's asking for a ticket.</p> <p>6 Q. Right. But it's fair to say you    7 exceeded the speed limit when you're behind on your    8 route. Is that right?</p> <p>9 A. Yeah, to an extent, maybe 70. Maybe    10 something like that on, you know, like, a Turnpike    11 or 295.</p> <p>12 Q. Okay. So if the speed limit was 65,    13 you would never go faster than 70?</p> <p>14 A. I never said that.</p> <p>15 Q. Okay. If you were late on your route,    16 how much above 65 would you go if you could    17 quantify that?</p> <p>18 A. I would go up to 70.</p> <p>19 Q. Nothing beyond?</p> <p>20 A. Like I said, if I was passing somebody    21 or something, yeah.</p> <p>22 Q. Okay. And once you caught up with your    23 route, did you slow down again?</p> <p>24 A. Yeah.</p> <p>25 Q. Observe the speed limit?</p>
<p style="text-align: right;">Page 95</p> <p>1 A. JR-12, the check view or my pay stubs.    2 Q. JR-12 is fine.    3 A. Okay.    4 Q. Without telling me anything that was    5 discussed, did you speak to your attorney about the    6 upcoming deposition?</p> <p>7 A. Well, yeah.</p> <p>8 Q. Okay. I mean, about the substance of    9 it or just that it's happening to be there?</p> <p>10 MR. MILLER: You can say you spoke to    11 us, that's it.</p> <p>12 A. Yeah.</p> <p>13 Q. When did you speak with them?</p> <p>14 A. Prior. Before our original date, I    15 guess.</p> <p>16 Q. Okay. Was it your practice while    17 driving always to do a follow the flow of traffic?</p> <p>18 A. No, I mean not all the time.</p> <p>19 Q. Well, to the extent that you traveled    20 both speed limit and exceeded the speed limit,    21 would that only be in situations where you were    22 following the flow of traffic?</p> <p>23 A. Either that or passing someone in a    24 different lane and then back down to the flow of    25 traffic.</p>	<p style="text-align: right;">Page 97</p> <p>1 A. Yeah.</p> <p>2 Q. Okay. Have you tried to convince    3 anyone to join this suit?</p> <p>4 A. No.</p> <p>5 MR. HERTZBERG: We can mark this as the    6 next document.</p> <p>7 (Exhibit JR-13, Timecard Report with    8 Notes, was marked for identification.)</p> <p>9 Q. I'm showing you exhibit JR-13, which is    10 titled, Timecard Report With Notes, date range of    11 4/27/2010 to 2/23/2013. Do you recognize this    12 document?</p> <p>13 A. No.</p> <p>14 Q. Do you know what it is?</p> <p>15 A. I'm guessing it's a breakdown of my    16 hours, clocking in and out.</p> <p>17 Q. Okay. You see there's a code where it    18 says COJ001830?</p> <p>19 A. Okay.</p> <p>20 Q. Does that represent you?</p> <p>21 A. Yeah, I think so.</p> <p>22 Q. Okay.</p> <p>23 A. I can't remember what my, you know.</p> <p>24 Q. Does it correspond to the breakdown    25 that Steve sent you?</p>

Page 98	Page 100
1 A. For my checks? 2 Q. Yeah. 3 A. Yeah. 4 Q. Okay. And you see on page three? 5 A. Okay. 6 Q. That's Bates number D000247. At the 7 bottom it says: "Notes claims didn't take a break, 8 will be investigated." 9 A. Okay. 10 Q. Does that, in any way, refresh your 11 recollection as to the general time frame when you 12 first indicated that you didn't take a break, 13 sometime toward the end of 2010? 14 A. Well, yeah, that's, you know, 15 basically, when I started getting -- getting the 16 idea of, like, you know, they don't like it when 17 you take a 30-minute lunch break and take a cooler 18 with you. 19 Q. Okay. So when you described your 20 initial conversation with Steve, you think it was 21 around that time? 22 A. I would have to say yes. I know it 23 was, from what I can remember, closer towards the 24 beginning of my employment than the end. So that 25 would seem around that time frame.	1 A. Yeah, I think I had to leave early that 2 day. So I might have informed them prior to that I 3 wouldn't be stopping, taking a lunch because I had 4 something to do that day, so. 5 Q. Do you remember who you advised of 6 that? 7 A. No, I can't exactly remember. I mean, 8 it was either, probably, Jeff or Steve. 9 Q. Okay. I'm looking at page 23, which is 10 D000267, October 6, 2012, there's also an 11 indication of NL. Do you remember whether you 12 advised Steve or Jeff, at that time, that you had 13 skipped lunch? 14 A. Yeah, probably one of them. Again, I 15 left early. 16 Q. Okay. 17 A. Usually the only times I ever leave 18 early or not go to work probably had something to 19 do with a doctor's appointment with my son, so. 20 Q. Okay. And if you look at page 25 under 21 12/24/2012, there's also an NL designation, right? 22 A. Right. 23 Q. Do you recall contacting Steve or Jeff 24 about missing lunch? 25 A. Not that day, I can't remember.
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1 Q. Talking ball park? 2 A. Yeah. 3 Q. Okay. And if you go to page seven of 4 27, which is D000251, on the Bates stamp? 5 A. Okay. 6 Q. Do you see under Tuesday 4/12/2011? 7 A. Okay. 8 Q. There's an indication NL? 9 A. All right. 10 Q. Any idea what that reflects? 11 A. I'm going to guess no lunch. 12 Q. Well, does seeing that refresh your 13 recollection at all of any other occasion where you 14 advised Steve that you had skipped lunch? 15 A. No. 16 Q. Okay. 17 A. Not that I can remember. 18 Q. Just to the best of your memory. 19 Okay. Turning to page 15, which is 20 D000259, do you see Friday, January 6, 2012 there's 21 another NL indication. Do you see that? 22 A. Yes. 23 Q. Does that refresh your recollection 24 that in or around that time you advised Steve or 25 anyone that you had skipped lunch?	1 Q. Okay. Did you ever have any 2 conversations with Leon Young while you were at 3 Empire? 4 A. Not that I can remember, no, sir. 5 Q. Other than Steve and Jeff, did you ever 6 have any conversations with any kind of management 7 representative at Empire? 8 A. Not that I can remember, unless Bobby 9 Stickler or something, I think he might have been 10 in charge of maintenance for the vehicles. I think 11 I might have had a couple of conversations to him 12 about problems with vehicles, that might have been 13 it. So that's what I can remember. 14 Q. Anyone else or that's all you can 15 remember? 16 A. No. 17 MR. HERTZBERG: Okay. I'm done. 18 (Deposition was concluded at 1:40 p.m.) 19 20 21 22 23 24 25

1 Page 102

2 CERTIFICATE

3 I HEREBY CERTIFY that the witness was duly  
4 sworn by me and that the deposition is a true  
5 record of the testimony by the witness.

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8  
9 Catherine Golembeski  
10 NJ-Certified Shorthand Reporter  
11 Registered Professional Reporter  
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1 LAWYER'S NOTES

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